OMBUDSMAN OF BRITISH COLUMBIA

Special Report No. 11

to

The Legislative Assembly of British Columbia

THE COBB CASE

Legislative Assembly
Province of British Columbia

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June 14, 1985

The Honourable K. Walter Davidson
Speaker of the Legislative Assembly
Province of British Columbia
Parliament Buildings
Victoria, B.C.

Mr. Speaker:

I have the honour to submit herewith a special report to the Legislative Assembly, pursuant to section 30(2) of the Ombudsman Act, R.S.B.C. 1979, c. 306.

This report deals with my investigation into the complaint of Mr. James Cobb of Louis Creek, B.C. against the Ministry of Forests, and my recommendations for the resolution of the complaint.

Yours sincerely,

Karl A. Friedmann
Ombudsman

OMBUDSMAN OF BRITISH COLUMBIA

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The Legislative Assembly of British Columbia

An investigation by the Ombudsman into a complaint received from Mr. James Cobb of Louis Creek, B.C.

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INTRODUCTION

I find it necessary to draw to the attention of the Legislative Assembly the case of Mr. Cobb - a rancher who has suffered both financially and otherwise because he relied on scaling procedures established by the Ministry of Forests. Logs are scaled or measured in order to determine the volume of timber harvested. If the timber is Crown timber, the scale is the basis upon which the amount of stumpage or royalty owed to the Province is calculated. The scale also serves as the basis for settlements among parties buying or selling the harvested volumes. When the scale is not conducted properly, the Province can suffer losses in stumpage fees, and other parties relying on the accuracy of the scale can also suffer financially.

In Mr. Cobb's case the timber in question was Crown timber, harvested from his agricultural lease. He had arranged to sell the timber to Holding Lumber Company ("Holding"), and the Ministry of Forests had given Mr. Cobb permission to have the logs scaled at Holding's mill. The scaling was done by Holding's scalers (who were licenced by the Ministry of Forests), following procedures established by the Ministry of Forests.

At the time Mr. Cobb was a rancher, not a logger. He was not familiar with the scaling process, and he accepted the word of Ministry employees that the scaling procedure they had established at Holding's mill was the normal procedure used by the Ministry. However, when problems arose at a later date, he realized that the scaling procedures which the Ministry

permitted Holding to use differed from normal Ministry procedures in significant respects, and were such as to permit the omission of large volumes of logs from the reported scale.

Mr. Cobb retained the services of a professional forester to provide an estimate of the timber removed from his agricultural lease. The forester estimated that 741 322 cubic feet of timber had been logged, yet only about 443 000 cubic feet of timber were scaled. This difference is very large; it represents timber which Mr. Cobb delivered to Holding's mill but for which he was not paid, labour which Mr. Cobb's loggers expended in cutting and removing the timber but for which they were not paid, and it also represents a portion of the Province's timber resource which was harvested, but for which the Province was not compensated.

The discrepancy became apparent to Mr. Cobb in 1975-1976. He has spent the intervening decade in a relentless attempt to correct a situation which was caused by procedures established by the Ministry of Forests. Mr. Cobb came to me for assistance in 1980. In my view the matter requires correction, and during the past five years my staff and I have met with and corresponded with the Ministry of Forests in an attempt to resolve the problem.

Initially, it appeared that my efforts would bear fruit. In September, 1981, I proposed a five-step resolution which involved the hiring of an independent professional forester to prepare an estimate of the volume of timber removed, and a settlement by the Ministry of Forests based on any

discrepancy between that estimate and the scaled volume. This proposed resolution was developed from an earlier suggestion made by the Minister of Forests, the Honourable T.W. Waterland, that an independent consultant be hired to analyze the situation and recommend a course of action, rather than have the matter continue indefinitely.

In response to my proposal, the Ministry hired a forester (whom I had suggested, and to whom neither the Ministry nor Mr. Cobb objected), and the field work was done in 1982. In its contract with the forester, the Ministry specified two levels of utilization for which the forester was to prepare volume estimates. (Level of utilization refers to the size of tree cut and how much of it was cut - for example how high a stump was left, and the diameters of the tops and bottoms of the trees which were cut.) The resulting estimates for the two specified levels were 754 645 cubic feet and 659 520 cubic feet - both significantly greater than the volume reported by Holding's scalers (approximately 443 000 cubic feet).

After it received the initial results of the field work, the Ministry requested the forester to prepare additional estimates for four other levels of utilization. These levels assumed that bigger stumps were left, bigger trees were left uncut, and that less of each tree was used. One of these utilization levels produced an estimate (457 618 cubic feet) which was within the range of the scaled volume (approximately 443 000 cubic feet), and on that basis the Ministry took the position that the scale was accurate and there was no need for further action.

Clearly, the assumptions made about the level of utilization practiced are important, since the application of different assumptions results in wide variations in the volume estimates. The only direct evidence we have with respect to the level of utilization actually practiced comes from the Ministry's own Logging Inspection Reports completed by Ministry staff during and immediately after the logging. I recommended that this information be used to select the volume estimate which would constitute an appropriate basis for a settlement of the issue. Without addressing that point directly, the Ministry has consistently refused to settle the matter. It has raised one argument after another in explanation of its refusal to act. I have addressed each of these in turn, and at times repeatedly.

I brought the matter to the attention of the Lieutenant Governor in Council in July 1984. To date the only responses I have received consist of correspondence in which old issues are rehashed and further clarification is sought. To these I have responded in considerable detail, but I have finally come to the conclusion that these responses do not constitute an adequate or appropriate remedy.

In my view this matter could have and should have been settled by the Ministry of Forests without the intervention of the Legislative Assembly. It is clear that there were significant problems with the scaling procedures established by the Ministry, a fact which was attested

to in an affidavit sworn by the Ministry's Inspector of Licenced Scalers in 1977. To the extent that Mr. Cobb suffered because of his reliance on these procedures, the Ministry has a responsibility to compensate him for his losses. I had outlined a procedure by which those losses could be estimated, and the Ministry initially seemed to agree with this approach. However, subsequent to its initial cooperation the Ministry has refused to take the final steps which would rectify this complaint.

For this reason I find it necessary to seek the assistance of the Legislative Assembly in this matter. Mr. Cobb is a tenacious individual who has spent a great deal of time, energy and money in an attempt to obtain compensation for a situation which resulted from a system established by the Ministry of Forests. I believe the Ministry owes him that compensation, but to date I have been unable to obtain the appropriate corrective action. Through this report I am requesting the assistance of the Legislative Assembly in persuading the Ministry of Forests to meet its obligation to Mr. Cobb.

A BRIEF HISTORY OF THE PROBLEM

The timber in question came from Mr. Cobb's agricultural lease. He obtained the lease in 1970 and subsequently purchased the land under the terms of the lease agreement. The lot is on a lake and is accessible only by water. His intention was to expand and improve his ranching operation; to this end he clearcut and seeded the larger portion of the lot - some 120 acres; he rough cleared another area for grazing,

transporting his cattle across the lake on a raft, and he left a small portion of the lot unlogged.

Mr. Cobb entered into an arrangement with Holding Lumber Company Ltd. for the sale of his timber, and hired two loggers to help him in the operation. The actual logging was done during 1971 and 1972; Ministry of Forests staff inspected the operation twice, during and after the logging, to ensure that the work was consistent with the requirements of Mr. Cobb's Licence-to-Cut. Since there was no road access, the timber had to be removed by water. Similarly, Mr. Cobb had chosen to sell his logs to Holding because at that time there were no other mills operating at that end of the lake. So, the logs were strapped in bundles and dropped into the lake; the bundles were then formed into booms, which were subsequently towed down the lake to Holding's mill.

The Forest Act at the time required that logs be scaled before they were put into the water, unless the Chief Forester permitted otherwise. In 1967 Holding had obtained permission to scale timber at its mill (i.e. "post-water scaling") rather than at the various landing sites around the lake. Since it was Mr. Cobb's responsibility to have the timber scaled, he sought and received the Ministry's permission to have his logs scaled by the scaler at Holding's mill - as was the practice with other logging operations on the lake at that time. Mr. Cobb's logs were scaled and processed during 1972 and 1973. Holding paid him on the basis of the scale, and on that same basis Mr. Cobb paid stumpage fees to the Ministry of Forests, and paid his loggers for their work.

At some point during that period a dispute arose between Mr. Cobb and Holding with respect to the price Holding was to pay for the logs. Mr. Cobb initiated legal action against Holding; he was successful and Holding was directed to pay him an additional $21,675.

Early in 1973 Mr. Cobb had asked the Ministry to provide him with access to the daily scale sheets for his timber. (The daily scale sheets are the tallies completed by the scaler as he scales each log; the daily scale sheets are combined into monthly scale returns, which form the basis for the Ministry's stumpage fee accounts). The Ministry has produced a letter dated March 2, 1973 in which it advised Mr. Cobb that he could view the scale sheets at the local Ranger's office. For unknown reasons, Mr. Cobb did not receive this letter. Mr. Cobb requested the information again in 1974, but was denied access to the documents on the grounds that the matter was then before the courts.

Mr. Cobb finally gained access to the daily scale sheets toward the end of 1975. He sought the assistance of a professional forester in reviewing the sheets. The forester had previously had access only to the monthly reports, and had believed that the timber had been scaled and reported in a manner consistent with normal Ministry standards. However, the daily scale sheets revealed significant departures from normal procedures; for example, the daily scale sheets were not even numbered so that there was no way of knowing whether or not all of the sheets had been included in the monthly scale return.

Mr. Cobb's forester delved more deeply into the matter and found that the scaling procedures which the Ministry had established and permitted at Holding's mill seemed to constitute a special arrangement. There was little or no opportunity for the Ministry to check the accuracy of the scaling, and because of the speed and configuration of the operation, it was difficult for the scalers to do their job properly, or in fact to know whose timber they were scaling.

On the basis of this information Mr. Cobb again initiated legal action against Holding. This time the court refused to hear his case on the grounds that it was part of the earlier case and should have been addressed at that time.

With this avenue of redress closed to him, Mr. Cobb turned to the other party in the matter - the Ministry of Forests. Under the legislation at the time it was necessary for a person who wished to sue the Crown to seek the Crown's permission to do so. Mr. Cobb followed the steps required by this procedure, and in November 1979, was granted permission to initiate action for damages resulting from an alleged breach of contract between Mr. Cobb and the Province.

Unfortunately, by this point Mr. Cobb's financial position had worsened considerably, and he could not muster the funds necessary to pursue legal action against the Crown. Mr. Cobb estimated that Holding had underpaid him approximately $112,400 for his logs. That was at the end of 1973; by

1980, when he brought this problem to my attention, the additional forester's and legal fees he had incurred in fighting his case, and interest on the underpayment, brought his estimated losses to more than $257,000.

Mr. Cobb no longer ranches; his ranching income did not keep pace with his growing burden of debt. He sold his cattle, and most of his land is now either for sale or sold. He tried his hand at "working iron" for awhile, but a knee injury prevents him from welding for any period of time. He now exists primarily on a small Worker's Compensation Board pension. If he had received the correct amount for his logs, he might have been able to continue his ranching operation, and he would not have incurred additional thousands of dollars of expenses in seeking to correct the problem.

MY INVESTIGATION AND CONCLUSIONS

Mr. Cobb first contacted my office in October, 1980. After a preliminary review of the matter, I wrote to the Ministry of Forests in February 1981, advising the Ministry of the details of the complaint and of my intention to investigate. During the next few months my staff compiled information on what turned out to be a fairly complex problem, and by September 1981, I was able to provide the Ministry with a detailed report on the complaint (see Appendix A).

Briefly, my investigation showed that by 1966 Ministry of Forests' staff had expressed concern about the manner in which Holding was scaling timber. After a series of meetings and an exchange of correspondence, a "post water" scaling procedure was approved, subject to a number of specific conditions. The Ministry's earlier concerns had focused on its inability to conduct a check scale on what was a very fast scaling and cutting operation, and the intent of the new procedures was to address this inadequacy. In accordance with the requirements of the legislation at the time, the Chief Forester gave the exemption from the requirement that logs be scaled before they were put into the water. Holding was advised of this exemption, with the attendant conditions, in June, 1967. During the subsequent months, Holding sought and received relief from a number of these conditions; these relaxations of the Chief Forester's conditions were granted by the Ministry's district office, apparently without notification to the Chief Forester.

From my investigation of the matter, I have concluded that the following constitute the main inadequacies of the scaling and reporting procedures at the Holding mill:

- Holding mixed bundles of different timber marks in a single boom. This was contrary to the Chief Forester's direction, but permitted by the district office. The timber mark indicates the source of the timber and the party responsible for paying stumpage fees on it. The mixing of timber marks within a boom increased the likelihood that the scaler would not know whose timber he was scaling, and consequently increased the likelihood of errors in stumpage accounts.

- Holding used its own daily scale sheets instead of the scale books used by the Ministry. Again, the district office approved the use of Holding's scale sheet. Unlike the Ministry forms, these sheets were unnumbered, making it impossible to determine whether or not all the daily sheets had been included in the monthly return.

- Holding did not send the daily scale sheets to the Ministry; the company compiled the monthly return and sent only that return to the Ministry.

- The monthly return did not include the notation "Watered before Scaling"; this was one of the conditions specified by the Chief Forester.

- Holding's scalers did not sign all of the daily scale sheets; also, the various marks on the scale sheets indicate that at times the scaler did not know whose timber he was scaling, and that someone with different handwriting appeared to have completed the identifying information at a later date.

- There was little or no opportunity for a check scale, although the need for a proper check scale had provided the initial impetus for the change in procedures. Correspondence on Ministry files indicates that the Chief Forester had suggested structural changes at the mill so that logs could be spread out for checking; however,

> Holding offered to stop the mill operation whenever the Ministry requested a check scale and this offer was accepted. It should be pointed out that the logs were scaled as they moved along a conveyor belt to the barking machines; they were separated into large and small logs, sent to different saws, and then returned to holding ponds where they were mixed with other logs according to size and species. Even if the mill were shut down during this operation, there would be very few logs to check, since the great majority of them would already have been mixed in with logs from other sources in the holding ponds.

It was my conclusion that the procedures established and permitted by the Ministry were not the usual Ministry procedures as Mr. Cobb had been assured, but rather were deficient in very significant respects. Moreover, I concluded that the scale reporting procedures were such that neither Mr. Cobb nor the Ministry could determine the accuracy of the scale nor the completeness of the return.

I should point out that I also found support for this position in a statement made by the Ministry of Forests' Inspector of Licenced Scalers, Mr. Whitehouse. In 1977, when he attempted legal action against Holding for the second time, Mr. Cobb had sought and obtained a statement from the Inspector of Licenced Scalers. Mr. Whitehouse swore an affidavit which is attached as Appendix B. In that affidavit he describes the normal scaling procedures required by the Ministry and then comments on the scaling procedures employed by Holding ("the Defendant"):

> "...That also by special arrangement between the Forestry Service and the Defendant herein, the daily summary sheets as prepared by the Defendant and to be presented to the Forestry Service, were not numbered in sequence and this omission, although authorized by the Forestry Service was not the best method that could be employed.
>
> That I personally would not approve of this method of reporting. That the method of scaling employed by the Defendant during the period in question and approved by the Forestry Service, was similarly not the best method that could be employed because it made check scaling by the Forestry Service, difficult in the extreme."

Not only was it clear that there were significant problems with the scaling procedures, but also the various estimates which had been made indicated that the volume of timber harvested from the lot was significantly greater than the volume scaled. In short, there appeared to be very good evidence that Mr. Cobb had been subjected to a short scale, and since the Ministry had licensed the scalers, and had established the procedures which permitted the short scale, I felt the Ministry had a responsibility to correct the matter.

I suggested a five-step resolution: the Ministry would hire an independent forester, acceptable to both Mr. Cobb and the Ministry, to provide an estimate of the harvested timber, following procedures which in the Ministry's view would provide the most accurate estimate. If the forester's estimate were to prove higher than the scaled volume, the Ministry was to compensate Mr. Cobb in an amount representing the underpayment, plus interest, the cost of the forester, and legal fees.

As I indicated earlier, the Ministry seemed to agree with this approach. The Deputy Minister of Forests pointed out certain concerns and suggested

that because of problems associated with the situation, I should first obtain the opinion of a professional forester on the feasibility of such a proposal. He went on to state that if I did proceed with the proposal, the Ministry would request that the required funds be made available. I followed his advice, obtained the suggested opinion as to the feasibility of the proposal, and provided the Deputy Minister with this information in November, 1981. (This exchange of correspondence is attached as Appendix C).

After reviewing the forester's report, the Ministry responded by cautioning that because the actual stand of timber was long gone, and because of other unknowns, the proposed work could produce an estimate but could not provide absolute proof of the volume of harvested timber. Then, as now, I recognize and accept this. The Ministry also stated that before the work was commenced, the forester should meet with Ministry staff to reach agreement on the utilization standard and sampling intensity to be used. The meetings were held, money for the study was obtained, a contract was issued, and the field work was undertaken in the spring of 1982. (Relevant correspondence is attached as Appendix D).

The forester filed his report in June, 1982. The Terms of Reference which formed part of the contract between the Ministry and the forester specified that at least two volume estimates were to be prepared, based on different utilization assumptions. One utilization level was to reflect close utilization standards, and the other level was to reflect contract cutting specifications and information from the Ministry's

logging inspection reports. The forester added two other levels of utilization to provide different combinations of the specified measurements. After he reported the initial results for these four levels to the Ministry, he was asked to complete additional calculations to provide volume estimates for four more levels of utilization. The results of his work are summarized below; levels 1 to 4 are the forester's first set of calculations, and levels 5 to 8 are the additional calculations requested by the Ministry. Levels 1 and 3 are the two levels specified in the Ministry's Terms of Reference. It should be noted that the resulting estimates include Ministry of Forests' loss factors for decay, waste and breakage.

Utilization Level	Diameter at Breast Height	Height of Stump	Diameter of Top	Net Volume Estimate
1	7 inches	12 inches	4 inches	754 645 (cu.ft.)
2	7	12	6	671 984
3	7	18	6	659 520
4	9	12	6	624 033
5	9	12	7	591 266
6	9	18	8	487 560
7	11	12	6	535 511
8	11	18	8	457 618

As can be seen, all of the volume estimates are higher than the scaled volume (approximately 443 000 cubic feet), and levels 1 and 3 (those specified in the Ministry's Terms of Reference) are significantly higher.

After reviewing this information, the Ministry concluded that Mr. Cobb's timber must have been logged to intermediate utilization standards

(represented by level 8 above) and since the resulting estimate for that level was within the range of the scaled volume, that there was no evidence that Mr. Cobb's timber had been incorrectly scaled. (Appendix E)

The level of utilization is a key factor, and can yield wide variations in the resulting volume estimates, as the above figures demonstrate. Mr. Cobb has stated that Ministry staff at the time required him to follow close utilization standards in his logging, and his Licence-to-Cut required that all trees 8 inches or more in diameter at a point 12 inches from the ground, if cut, were to be utilized to a top diameter of 6 inches. Mr. Cobb's position is supported by his logger, and by his forester who viewed the area and the operation before and during the logging.

The Ministry, on the other hand, has stated that the intermediate level of utilization was the minimum requirement up to 1972, although it had been encouraging close utilization from 1965 onward. These conflicting positions, coupled with the passage of time and the absence of the logs in question, make it somewhat difficult to determine the actual level of utilization practiced. Fortunately, the Ministry's files include reports which provide the required information. A Ministry employee completed two Logging Inspection Reports on Mr. Cobb's operation - one in July, 1972 when Mr. Cobb had requested an extension of his licence, and a final one in March, 1973 after logging had been completed. These reports are attached as Appendix F.

Both reports indicate that the Assistant Ranger had inspected the site. The July 1972 report states that the average stump height was 12 inches, that

the average top diameter was 5 inches, and that stumps and tops were being cut with the least possible waste. Similarly, the March, 1973 report indicates a stump height of 10 inches and a top diameter of 5 inches; it also indicates that log lengths were being varied to provide for complete utilization and that stumps and tops were being cut with least possible waste. In my view, these reports, compiled by the Ministry, provide direct and useful information on the actual level of utilization practiced on Mr. Cobb's lot, and as such they can be used to indicate the appropriate volume estimate to be used to resolve the complaint.

I wrote to the Ministry in October, 1982, addressing the utilization issue as well as some concerns which the Ministry had raised earlier. I pointed out various facts which indicated that the level of utilization practiced was very similar if not identical to the close utilization standard. Drawing on the information in the Ministry's own Logging Inspection Reports, I suggested that the appropriate standard to use in evaluating the volume estimates prepared by the forester was that corresponding to a 7 inch diameter at breast height, 12 inch stump and 5 inch top (i.e. level 2 in the earlier table). I recommended that this volume estimate be accepted as the volume of timber removed from Mr. Cobb's lot, and that the Ministry compensate Mr. Cobb for the difference between that estimate and the scaled volume, plus interest and fees. (Appendix G)

However, the Ministry did not accept this recommendation. In January of 1983 the Deputy Minister of Forests wrote to provide the results of some calculations his staff had undertaken on the scale sheets. The information

was technical in nature and since I found it difficult to understand, I sought the assistance of a professional forester. During the ensuing months the matter was eventually clarified with the forester's assistance, correction in interpretation from the Deputy Minister of Forests and discussions between my staff and Ministry staff. The details of this exchange are found in Appendix H. Without slipping too deeply into the technical aspects of the issue, I would summarize the Ministry's points by saying that the Ministry was attempting to use information from the scale sheets to indicate the level of utilization.

Briefly, Ministry staff had examined a sample of the entries on the scale sheets and had determined that the scaled logs averaged 6.89 cubic feet in volume and 15.5 feet in length. These figures were then compared to information compiled by the forester who had prepared volume estimates for the Ministry. Based on the comparison with logs of a similar length, the Ministry concluded that in order to produce a scaled average volume of 6.89 cubic feet, Mr. Cobb must not have logged trees which were less than 12 inches in diameter at breast height.

There is an important flaw in the Ministry's logic on this point. Note that the Ministry used the <u>scale sheets</u> to develop information on the <u>harvested timber</u>; in other words, it has taken the scale information as an accurate representation of the harvested volumes. On the basis of the scale data (assuming the Ministry took an accurate sample), the Ministry has concluded that Mr. Cobb must have left trees under 12 inches in diameter unlogged. The problem lies in the very point I have been making from the beginning of

my investigation of this matter: because of the procedures established and permitted by the Ministry of Forests there is no way of knowing whether all the logs were scaled or whether all the scale sheets were included in the compilation which Holding reported to the Ministry. Thus the average volumes obtained from the scale sheets are only the average volumes of logs which were reported to have been scaled, and there is no way of determining what relationship that figure might bear to the average volume of the logs actually harvested from Mr. Cobb's lot.

Since my efforts at resolution seemed to be making little or no headway, I attempted to arrange a meeting on the matter with the Minister of Forests. The Honourable T.M. Waterland had been contacted by Mr. Cobb prior to my involvement in the problem. In fact, the resolution which I had recommended was based on a proposal which Mr. Cobb's M.L.A. had suggested to Mr. Waterland in 1979. Internal Ministry documents indicate that Mr. Waterland saw the use of an independent consultant as a possible resolution of the problem.

In view of his prior involvement in the matter, I felt that Mr. Waterland might be able to assist me in obtaining a resolution for Mr. Cobb. It was to this end that I attempted to arrange a meeting with Mr. Waterland, in March and again in May, 1984. However, I was unsuccessful in these attempts. Mr. Waterland initially stated that he assumed the matter had been closed, and then stated that Mr. Cobb could pursue the matter through the courts if he chose to do so. (This exchange of correspondence is attached as Appendix I)

Being unsuccessful in my attempt to meet with the Minister, I moved on to the next course of action available to me under the Ombudsman Act. In July, 1984, I submitted a report of my investigation of Mr. Cobb's complaint to the Lieutenant Governor in Council with a request for assistance in obtaining a resolution of the matter.

To date, the responses I have received consist of two letters from the Secretary to Cabinet, focusing on points which Cabinet apparently considered erroneous or unclear. I have responded to both of these, and that exchange of correspondence is attached as Appendix J.

Some of the points raised go back to my initial report of the matter in September of 1981. In that report I had outlined in considerable detail the deficiencies which I saw in the scaling procedures employed at Holding's mill. Although the intention of such reports is to provide Ministries with an opportunity to correct or comment on any of the Ombudsman's findings with which the Ministry disagrees or considers erroneous, the Ministry's response did not contradict the detailed deficiencies which I had outlined. In a January, 1983 letter, the Ministry made the general statement that I was incorrect in stating that the scaling procedures at Holding's mill deviated from normal practice. The Ministry subsequently seemed to modify this position, stating "The Ministry does not dispute that there was an opportunity for Holding Lumber Ltd. to submit incorrect scale summaries, however, no one has provided the Ministry with evidence that this, in fact, happened." (Letter of April 28, 1983 from Deputy Minister of Forests; see Appendix H).

However, by December of 1984, my September, 1981 report had been reviewed in detail, and the Secretary to Cabinet made a number of comments with respect to my conclusions on the scaling procedures. Briefly, the points raised focused on whether the scaling procedures applied to Mr. Cobb's timber, whether the requirement to use the "normal scale return" referred to the daily scale sheets or to the monthly return, and whether logs of different timber marks were mixed on a single scale sheet. I believe it is fairly clear that the scaling procedures established in 1967 were to be applied to all timber scaled at Holding's mill, and certainly the Ministry did not specify otherwise when it gave Mr. Cobb permission to have his logs scaled there. With respect to the other points, first the statement of the Ministry's Inspector of Licenced Scalers makes it quite clear that normal Ministry practice would have required the use of sequentially numbered scale books instead of the unnumbered forms used by Holding; second, I provided the Ministry with a reference to a scale sheet on which different timber marks were mixed.

The Secretary to Cabinet also raised the issue of level of utilization. He reiterated the point made earlier by the Ministry of Forests in which average scaled log volumes were used to arrive at the conclusion that Mr. Cobb must not have logged trees under 12 inches in diameter. He also stated that small trees were gathered into rows and burned at the end of the logging operation; this, I inferred, was intended to account for the gap between the scaled volume and the volume estimated to have been removed from the lot. I responded by again pointing out the fact that the scale

reporting deficiencies prevented the use of the scale sheets as a reasonable indicator of level of utilization, and by indicating that I found it highly unlikely that Mr. Cobb would have burned 200 000 - 300 000 cubic feet of timber for which he had a ready purchaser.

It was a little discouraging to find these same points raised again in the second letter from the Secretary to Cabinet (March 25, 1985). Much of that letter also seemed to say that just because there was an opportunity to short scale Mr. Cobb does not necessarily mean a short scale actually took place. Strictly speaking, that is correct. But after five years of exposure to this issue I cannot help but conclude that the balance of information indicates that a short scale did, in fact, occur.

The Ministry's Logging Inspection Reports indicate a level of utilization which is similar to the Ministry's close utilization standard. The volume estimates corresponding to such a level of utilization are far, far greater than the scaled volume. Moreover, there is little else to account for the difference. All of the logs at that end of the lake were towed to Holding's mill - there was no road access, and one tug operator did all the towing; and there were no other mills to which Mr. Cobb could reasonably have sold the logs.

Moreover, Mr. Cobb had every incentive to sell to Holding as much of the timber as he possibly could. In order to log the area, he had to raft all equipment across the lake and set up camp. That is an expensive operation for a person who is not ordinarily involved in the logging business, and it

was important to Mr. Cobb to cover the cost of as many of those expenses as he could. Similarly, it cost him considerable time, labour and money to clear the land to a condition which would permit the planting of crops. Mr. Cobb was not a rich man; he was, in fact, barely surviving financially. Under these circumstances I find it extremely unlikely that Mr. Cobb would do other than sell every cubic foot of timber he could in order to recover his costs. It is correct that Mr. Cobb was directed by the Ministry to burn debris remaining on the lot; this direction followed from the Ministry's March 1972 inspection. However, I find absolutely no reasonable grounds for the Ministry's inference that Mr. Cobb burned thousands of cubic feet of marketable timber instead of delivering it to Holding's mill.

In short, while I appreciate the efforts of Cabinet to review the details of the complaint, these efforts have not served to alleviate Mr. Cobb's situation. Throughout the past five years I have reviewed the various points and responded to the arguments made by the Ministry, and then by the Secretary to Cabinet. The basic facts remain: there were serious inadequacies in the scaling procedures established by the Ministry; Mr. Cobb relied on those procedures, and the weight of the evidence leads to the conclusion that he was subjected to a short scale as a result. The Ministry of Forests has a responsibility to correct this situation, and I would ask the Legislative Assembly to assist in ensuring that the appropriate corrective action is taken.

MY RECOMMENDATIONS

My original recommendations included obtaining the services of an independent professional forester to prepare an estimate of the volume of timber harvested from Mr. Cobb's lot. The Ministry followed this recommendation; it paid a forester over $15,000 to prepare the required estimates. Thus the first part of my original recommendation has been satisfied.

The remaining action required involves the selection of a volume estimate from the figures prepared by the forester, and the payment of compensation based on the difference between the selected volume estimate and the scaled volume. I am recommending that the volume estimate selected be that corresponding to utilization level 2; in my view this best reflects the available information about the level of utilization practiced at the time. More specifically, my recommendations are as follows:

1. That the forester's estimate of net volume at Level 2 utilization be accepted as equivalent to the volume of timber removed from Mr. Cobb's lot and delivered to Holding Lumber Company. I am recommending the use of Level 2 because it is conservatively comparable to the utilization levels indicated in the two logging inspection reports and in the Licence-to-Cut.

2. That the Ministry of Forests recommend the approval of a special warrant to compensate Mr. Cobb for the value of the difference between the scaled volume and the specified net volume estimate, plus interest on that value, plus legal and forester's fees which Mr. Cobb has incurred in pursuing this matter. Mr. Cobb will then be required to pay the Province stumpage on the difference between the two volumes.

In my view the Ministry has a responsibility to Mr. Cobb which it has to date refused to meet. This has caused Mr. Cobb not only financial problems which contributed to the termination of his ranching operation but also emotional suffering at his inability to correct an injustice. As Ombudsman, the final step available to me in my attempt to help Mr. Cobb correct this injustice is to place the issue before the Legislative Assembly. I therefore respectfully submit this report for the consideration of the Legislative Assembly and ask that my recommendations be implemented or that other corrective measures be taken.

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Province of
British Columbia

Office of the
Ombudsman

Legislative Assembly
Parliament Square
Victoria
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V8W 1H9
Telephone (604) 387-5855
Zenith 2221

File No: 80 1243

September 14, 1981

Mr. T.M. Apsey
Deputy Minister
Ministry of Forests
Parliament Buildings
Victoria, B.C.

Dear Mr. Apsey:

Re: James and Dorothy Cobb
Louis Creek, B.C.

On February 17, 1981 I notified your officials that I had received a complaint from the Cobbs pertaining to your Ministry, and that I had decided to investigate the matter. As I indicated, the Cobbs' problems originated in 1972 when they began selling timber cut off their Agricultural Lease to a lumber company (Holding Lumber). The Cobbs contend that the Ministry of Forests permitted Holding Lumber to use improper scaling procedures, and because of this the Cobbs were underpaid for lumber delivered to the company. Further, the Cobbs contend that the Ministry delayed excessively in providing them with requested copies of daily scale returns, and because of this delay they were unable to pursue the matter through the courts. As a result the Cobbs are seeking compensation from the Ministry in the amount of $257,464.00, which includes the estimated value of the underscale, plus interest, legal and forester fees, and travel.

I asked Elaine Rivers of my Victoria office to make the necessary inquiries into this matter on my behalf. She has discussed the complaint with the Cobbs, with their lawyer James Horne, and with their forester, Gerry Boulton. She has discussed the matter with Mr. Whittaker, Mr. Hutchings, Mr. Waelti, and Mr. Robinson of your Ministry, and with Mr. Doyle, Mr. Edwards, Mr. Yacowar and Mr. Nelson of the Attorney General's Ministry. She has reviewed documents provided by the Cobbs, obtained from Ministry of Forests files in Victoria and in Kamloops, and made available through the Ministry of the Attorney General here in Victoria. As well she has reviewed the relevant legislation pertaining to scaling procedures.

. . . 2

I have now had an opportunity to review the information obtained from these various sources, and am in a position to advise you of my preliminary conclusions and of the recommendatons which I am considering.

Background

Because the case is a rather complex one I think it would be useful to review the background of the matter first, and to then discuss certain issues relevant to this complaint. As I indicated at the outset, the Cobbs were cutting timber off their Agricultural Lease and selling it to Holding Lumber Company. Mr. Cobb was paying stumpage directly to the Ministry of Forests on the basis of Holding's scale.

During 1972 and 1973 the Cobbs delivered a number of booms of logs to Holding, and a dispute arose over the price to be paid for the logs. In 1974 the Cobbs sued Holding Lumber for breach of contract; they were successful and were awarded $21,674.

The Cobbs state that, since early 1973, they had been requesting the Ministry of Forests to provide them with copies of Holding's daily scale records for the Cobbs' timber. The Ministry did provide the Cobbs with monthly summaries of the daily scale records; however, the Cobbs have stated that they were unable to obtain the daily records until 1975. The Cobbs have also stated that during this time the Ministry assured them that Holding was scaling according to proper, Ministry approved procedures.

When the daily scale records were made available, it appeared to the Cobbs and to their forester that Holding had not been scaling according to proper Ministry procedures. Holding's own scaling forms had been used instead of Ministry forms, and the pages were not numbered so that it was not possible to determine whether pages were missing. Moreover, it appeared that the scalers frequently were uncertain as to whose timber they were scaling.

The Cobbs felt that their timber had been shortscaled and so they had their forester prepare an estimate of the timber that should have come off the Agricultural Lease. On the basis of his estimate, the Cobbs claimed they had been underpaid for their logs by an amount of $112,398.00. They again initiated a suit against Holding; however this time the action was dismissed on the grounds that the matter should have been raised as an issue at the time of the first suit in 1974.

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Also, at Mr. Cobb's request, the R.C.M.P., Commercial Crime Section, began an investigation into this matter. However, after interviewing over thirty people, the R.C.M.P. decided against the laying of criminal charges since the available evidence did not seem adequate to prove beyond a reasonable doubt that a specific person intentionally acted to the Cobbs' detriment.

Mr. Cobb also sought the assistance of the Minister of Forests, who in turn asked Mr. Tony Robinson of his Ministry to conduct an inquiry into the matter. At the conclusion of Mr. Robinson's inquiry, Mr. Waterland advised "So far as I can determine, the scaling methods used at the time you sold your logs to Holding Lumber Company Ltd. were proper and correct, and approved as required by the Chief Forester". He indicated that he considered the matter closed.

Scaling Procedures

From my review of the file it appears that the Ministry and Holding began to discuss changes in scaling procedures in 1966. It seems the Ministry considered changes necessary to allow the scaler to scale accurately, and to facilitate check scaling. Holding proposed a procedure, the Ministry reviewed it, discussed problems and alternatives internally, and on June 20, 1967, Holding was advised that the Ministry would permit post water scaling subject to a number of conditions:

1) all logs to be adequately strapped to prevent bundle breakage;

2) log bundles to consist of logs of a single mark only;

3) logs to be adequately marked with a marking hammer or other approved method;

4) each boom to be made up of bundles of a single mark only;

5) a return to be submitted to the Forest Service indicating boom number, number of bundles in boom, estimated volume by species. "Above return must be submitted on the normal scale return with the notation 'watered before scaling'...";

6) booms to be stored at booming grounds awaiting receiving and scaling at mill;

7) logs to be scaled at the barker mill deck after bucking, before barking;

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8) scalers to record boom number and number of bundles per boom in scale book;

9) adequate facilities to be provided for check scaling as required.

This information was provided to Holding by A.H. Dixon, the District Forester in Kamloops; he further advised: "The above procedure is approved for a trial period of one year only and may be subject to minor revisions upon approval in writing by this office". A copy of the letter was sent to the Chief Forester.

On June 28, 1967, Holding wrote the Ministry enclosing a copy of one of Holding's own daily scale sheets and requesting permission to use that (rather than the Ministry's "normal scale return"). On July 10, 1967 Holding was given permission to use the sheet for an initial trial period of six months, with final approval to be given if the sheet was found satisfactory. An examination of the completed sheets used in the scaling of the Cobb timber shows that the scalers did not include the notation 'watered before scaling', and did not indicate the number of bundles in the boom, as required by conditions 5 and 8 above.

On July 10, 1967 Holding again wrote the Ministry requesting permission to put bundles of more than one timber mark in a boom. Interim approval was granted on July 28, 1967 for a three month period, with final approval to be given if the method proved satisfactory. No copies of his correspondence nor of that pertaining to the scale sheets were provided to the Chief Forester. On December 12, 1968 A.H. Dixon wrote to Holding giving "...authority to continue scaling in this manner under the conditions set out in the previous letters...".

A review of the internal correspondence relating to the proposed changes in Holding's scaling procedures indicates that one of the prime concerns was with the ability of the Ministry to check scale Holding's operation. For example, in a March 17, 1967 memo, Ministry official J.C. Payne stated:

> "However there is a weakness to the proposal in that unless we employ government paid scalers at the mill (2) checkability is impossible on Company employed men. The mill is fast and while an accurate scale can be made there is no buildup of logs for check purposes. It is an extremely "hot" scaling and cutting proposition."

A later memo to Mr. Payne (March 29, 1967, from C. Highsted) indicates that the proposed procedure should not be implemented unless additional facilities such as extended rollways could be provided to relieve the scalers from the pressure of the fast scaling and cutting operation. He goes on to say that he expects the Chief Forester would give permission to scale after watering if the company would provide proper facilities at the mill for scaling.

It appears that instead of providing additional facilities at the mill, Holding offered to stop operations any time the Ministry wanted to conduct a check scale. In an August 24, 1979 letter to Mr. Cobb, Mr. A.B. Robinson, Regional Manager in Kamloops, explained:

> "...The Chief Forester did suggest that some modifications should be made at the mill to facilitate check scaling. Holding Lumber, however, offered instead to stop the mill at any time that the Forest Service wanted to conduct a check scale."

He goes on to state that there were check scales and that there were no reports on file indicating that the checks were unacceptable.

In short, from my review of the correspondence, it appears that of the nine conditions outlined in the Ministry's June 20, 1967 letter, Holding was permitted to operate without complying with part or all of four of those conditions. Since the conditions were imposed so as to ensure accuracy of scale and checkability, it seems reasonable to conclude that the procedure resulting after the company had been released from a number of the conditions was probably less than satisfactory. I find support for this position in the affidavit of W.D. Whitehouse, then Inspector of Licensed Scalers, sworn on August 24, 1977; Mr. Whitehouse stated:

> "...the method of scaling employed by (Holding) during the period in question and approved by the Forest Service, was similarly not the best method that could be employed because it made check scaling by the Forest Service, difficult in the extreme."

Daily Scale Records

As I understand it, the Ministry approved procedure for completing scale returns then, as now, requires the scaler to record the scale information on a Ministry provided daily scale sheet. These sheets are consecutively numbered and often made up in triplicate. The scaler records the ~~sale~~ scale, the load number, timber mark, date and

other information as required, and he signs each scale sheet. A monthly summary is prepared from the daily scale sheets; this summary and the daily scale sheets, are sent to the Ministry's offices by the tenth of the following month.

From my review of the correspondence, and of the daily scale sheets for Mr. Cobb's timber, I have noted a number of deviations from the usual Forestry approved procedures for completing scale returns:

- As noted earlier, the company used its own daily scale sheets instead of the Ministry forms, and did not provide some of the information required by the Ministry;

- The company's daily scale sheets were not consecutively numbered, so it was not possible to determine if all the sheets were there or if some were missing.

- Holding did not send the daily scale sheets to the Ministry; the company compiled the monthly returns and sent only the monthly summary to the Ministry.

- Not all the daily scale sheets were signed by the scaler; moreover, it is clear that at times the scaler did not know whose logs he was scaling (as indicated by question marks and 'no mark visible' notations), and that someone else (i.e. a different handwriting) added information to the sheets -- presumably at a later date.

It is not clear as to why Holding was permitted to complete scale returns in this fashion; but it is clear that under such an arrangement one would be justified in questioning the accuracy of the scale. I again find support for this position in Mr. Whitehouse's affidavit:

> "...also by special arrangement between the Forestry Service and (Holding), the daily summary sheets as prepared by (Holding) and to be presented to the Forestry Service, were not numbered in sequence and this omission, although authorized by the Forestry Service, was not the best method that could be employed. ...I personally would not approve of this method of reporting."

Mr. Cobb requested the Ministry to provide him with copies of the daily scale sheets as early as February 7, 1973. He also states that he made verbal requests for the sheets on numerous occasions. The Ministry has stated that he was advised on March 2, 1973 that he

could view the scale returns in Chase. Mr. Cobb states that he did not receive the Ministry's letter advising him of this, and that despite his repeated requests, he was not given access to the daily sheets until April 1975. He was provided access to the monthly summaries at an earlier date, but it appears that these summaries contained no information which would lead him to suspect the scaling or reporting procedures.

I note also that Mr. Cobb was paying stumpage on the basis of the scale summary prepared by Holding. Thus it would be in the Crown's interest as well as in Mr. Cobb's interest to ensure that all timber delivered to the company was scaled and reported accurately. In this regard I have noted that when the daily scale sheets were compared with the monthly summaries, a calculation error of 50 units in Holding's favour was noted. I understand that the Ministry has made no attempt to collect the stumpage on this error.

Tentative Conclusions

On the basis of the available information, it appears to me that due to the Ministry's involvement in this matter, there is a good possibility that the Cobbs were subjected to a short scale. It appears that the scaling procedure was such that accuracy was difficult, as was identification of timber and check scaling. Further, the company was permitted to complete and forward scale returns in such a fashion that neither the Cobbs, nor the Ministry could determine the accuracy of the scale nor the completeness of the return.

I find I am unable to conclude with certainty the extent to which the Ministry is responsible for the delay in providing access to the daily scale sheets. The Ministry states that Mr. Cobb was advised that he could view the sheets; but Mr. Cobb states that if that letter was sent, it was never received. Mr. Cobb also states that when he was first provided access to the monthly summaries he asked for the daily scale sheets, but the Ministry did not have them because Holding had never provided the Ministry with copies; Holding had instead sent only monthly summaries.

However, on the whole, I consider that the Cobbs are justified in considering the Ministry responsible for allowing Holding to use an improper and inadequate scaling and reporting procedure, and for delaying the Cobbs from determining this by assuring them and their forester that normal and correct procedures had been used. Also, in my view it is not certain that the Chief Forester was even aware of

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the actual scaling and reporting procedure used by Holding. It appears that the Chief Forester gave his approval for post water scaling at the operation on the basis of the company satisfying a number of conditions; however, it appears that he was not advised of what seemed to be rather significant deviations from these conditions, and thus he may not have been aware of the procedure which he seemed to approve.

Possible Resolution

The problem at this point in time is that although the Cobbs may have been put into a position where they could be short scaled and where it would be difficult or impossible for them to detect a short scale, it is another matter to determine whether in fact such a short scale took place. In my view the weight of the evidence is such that it appears fairly likely that there was a short scale. I base this view partly on the conclusions reached by the R.C.M.P., and partly on the results obtained by Mr. Cobb's forester in his stump cruise.

In any case, in view of the fact that the Ministry allowed Holding to scale and report as they did, and that the Ministry assured the Cobbs that the scaling was conducted, according to normal Ministry approved procedures, I believe that it is incumbent upon the Ministry to give the Cobbs an opportunity to determine, to the extent possible, whether or not they were subjected to a short scale.

One means of doing this would be to have a professional forester do a stump cruise of the area to provide an estimate of the timber taken off the lot, and to use this estimate as a basis for settling the complaint. I realize that this procedure is not without its difficulties given the passage of time, and I also realize that your officials had misgivings about the estimation methods used by Mr. Cobb's forester. However, the matter needs to be settled, and it seems reasonable to me that both parties should agree to using the best estimation possible as the basis for settling the complaint.

I note that Mr. Waterland appeared to favour this approach, and had in fact suggested a forester who might be used to complete the estimate. However, it appears that the Minister was persuaded against this plan, and the Cobbs were instead advised that Holding's scaling procedures were proper and correct, and approved by the Chief Forester.

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My full proposal is as follows:

i) that an independent professional forester be retained to provide an estimate of the timber removed from the Cobbs' Agricultural Lease;

ii) that the forester be chosen so as to be acceptable to both the Cobbs and the Ministry, and that he be directed to use the estimation procedures which in the Ministry's view will provide the most accurate estimate;

iii) that the Ministry pay the forester's fees;

iv) that the forester's estimate be accepted by both the Cobbs and the Ministry as the volume of timber taken off the lot and sold to Holding;

v) that if the forester's estimate is higher than the volume of timber as reported by Holding's scale, the Ministry arrange an ex gratia payment to the Cobbs for the value of the difference between the two volumes, plus interest on that value, plus the legal forester fees the Cobbs have incurred pursuing this matter.

This proposal is made pursuant to Section 14(2) of the Ombudsman Act, R.S.B.C. 1979, c.306. If you accept this proposal, I shall consider the matter resolved, and I will not investigate further.

Please provide me with your comments on this proposal, or on any of the other matters addressed in this letter, within three weeks of this date. If you have questions, or if you would prefer to discuss the matter before responding, please contact Elaine Rivers in my Victoria office.

Yours sincerely,

Karl A. Friedmann
Ombudsman

NO. 268
KAMLOOPS REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JAMES L. COBB

PLAINTIFF

A N D :

HOLDING LUMBER COMPANY LTD.

DEFENDANT

A F F I D A V I T

I, WILFRED D. WHITEHOUSE, of the City of Kamloops, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. THAT I am the Inspector of Licensed Scalers for the Department of Forests, Kamloops District, in the Province of British Columbia, and as such am familiar with the circumstances surrounding logging operations conducted by the Defendant herein on property leased from the Provincial Crown by the Plaintiff herein, known particularly as Lot 1679, Kamloops District Yale Division, and as such, have a personal knowledge of the matters hereinafter deposed to, save and except where same are stated to be on information and belief, and in which case, I verily believe same to be true.

2. THAT in normal circumstances, timber which has been removed from a given plot of land is taken to a Mill, the load of logs spread out, the logs scaled by a licensed Scaler and a scale recorded on a

daily sheet.

3. THAT this daily scale sheet is either single entry or recorded on a pad which allows three (3) copies of the scale noted, to be made. The Scaler notes in the scale, the load number, the timber mark and the date.

4. THAT from these daily scale sheets, the Scaler or the Company, is to prepare a monthly summary and to deposit same, along with the scale sheets as signed by the Scaler, with the Forestry Service within ten (10) days of the end of the month.

5. THAT the Defendant herein submitted to the Forestry Service, the monthly summary sheets and from those sheets, the scale and royalty accounts were prepared by the Forestry Service.

6. THAT in the case of the Defendant's operations on the Plaintiff's land, during 1972 and a part of 1973, the Defendant, by special arrangement with the Forestry Service in the Kamloops District, scaled the timber after it had been placed in the Lake and as it was being removed from the Lake and going into the Mill.

7. THAT also by special arrangement between the Forestry Service and the Defendant herein, the daily summary sheets as prepared by the Defendant and to be presented to the Forestry Service, were not numbered in sequence and this omission, although authorized by the Forestry Service, was not the best method that could be employed.

8. THAT I personally would not approve of this method of reporting.

9. THAT the method of scaling employed by the Defendant during the period in question and approved by the Forestry Service, was similarly not the best method that could be employed because it made check scaling by the Forestry Service, difficult in the extreme.

10. THAT since 1966, the Forestry Service has been gradually changing the method by which licensed Scalers were employed. Since 1966, the Forestry Service has slowly been changing to the situation where all licensed Scalers were employed directly by the Provincial Government.

11. THAT in 1972 and part of 1973, the Scalers employed at the Defendant's Mill on the Adams Lake, in the Province of British Columbia, those Scalers who scaled the Plaintiff's logs, were employed by the Defendant, although licensed by the Provincial Government.

12. THAT in 1975 and 1976, I had a number of discussions with Gerald B. Boulton, a Consulting Forester, concerning the actual scale of logs credited to the Plaintiff herein during 1972 and part of 1973, and the methods by which check scaling by the Forestry Service was carried out.

13. THAT I did not suspect any problem with the scale of timber credited to Mr. Cobb, as provided this office by the Defendant herein.

14. THAT the scale and royalty account as prepared by my office, concerning the timber in question, was sent directly to the Plaintiff herein.

15. THAT I was not aware of any problems with the scale of timber credited to the Plaintiff herein and as provided by the Defendant herein, until my discussions with Mr. Gerald B. Boulton, beginning in May of 1975.

SWORN BEFORE ME at the City of Kamloops, in the Province of British Columbia, this 29 day of August, A.D. 1977.

A Commissioner for taking Affidavits within British Columbia.

W. D. Whitehouse

WILFRED D. WHITEHOUSE

DATED August A.D. 1977

BETWEEN:

JAMES E. COBB

PLAINTIFF

A N D :

HOLDING LUMBER COMPANY LTD.

DEFENDANT

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A F F I D A V I T

Service of a true copy hereof
hereby admitted this
25th day of August 19 77
Solicitor for the Defendant

MAIR HORNE JANOWSKY BLAIR
Barristers and Solicitors
305 - 186 Victoria Street
Kamloops, B.C. V2C 1Z7
Telephone 374-3161

COBB, James E. re: Holding Lumber Company Ltd.
File #C.9870
JAH:hm

Province of
British Columbia

OFFICE OF THE
DEPUTY MINISTER

Ministry of
Forests

Parliament Buildings
Victoria
British Columbia
V8W 3E7

1981-10-20

Your file: 80-1243
Our file: 0292917

Dr. Karl A. Friedmann
Ombudsman
Legislative Assembly
8 Bastion Square
Victoria, B. C.
V8W 1H9

Dear Dr. Friedmann:

Reference is made to your letter of September 14th, 1981 regarding the complaint of James and Dorothy Cobb and your proposal to resolve the matter.

We see problems with your proposal not only because it assumes all timber cut was sent to Holding Lumber Company's mill but also because of the practical difficulties in obtaining an accurate estimate at this late date. Furthermore, we believe it would be improper for a party to the dispute to establish a procedure to measure the volume of timber which Mr. Cobb cut and sold to Holding Lumber Company. We suggest you obtain the advice of a registered professional forester experienced in mensuration and statistics on the practicalities of making an estimate and the reliability of the resulting figure before proceeding further with your proposal.

In the event you do wish to proceed, the Ministry will request that funds be made available to cover the costs of paying a forester's fee.

Yours truly,

T. M. Apsey
Deputy Minister

Legislative Assembly
Province of British Columbia

OMBUDSMAN

8 Bastion Square
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V8W 1H9
Telephone (604) 387-5855
Zenith 2221

File No: 80 1243

November 18th, 1981

Mr. T.M. Apsey
Deputy Minister
Ministry of Forests
Parliament Buildings
Victoria, B.C.

Dear Mr. Apsey:

Re: James and Dorothy Cobb
Louis Creek, B.C.

Thank you for your letter of October 10, 1981 on this matter. I considered your suggestion that I obtain the advice of a registered professional forester on the practicality of estimating the volume of timber removed from the lot in question and on the reliability of that estimate, and decided that your suggestion was both reasonable and helpful.

I have engaged the services of J.T. Standish, R.P.F., of Talisman Land Resource Consultants for this purpose; Mr. Standish has just submitted his report and I enclose a copy for your information. As you will note, Mr. Standish has advised that the gross volume of timber removed from the logged area can be estimated at a level of precision comparable to Ministry of Forests' cruising standards, and that a reasonable estimate of the net volume can be made based on Ministry of Forests' logging inspection reports for the years in question.

On the basis of Mr. Standish's report I consider it reasonable to proceed with the proposal outlined in my September 14th letter. In that regard I was pleased to note that you have agreed to request funding for a forester's fee to proceed with the proposal. It is my intention that Mr. Standish be engaged to undertake the necessary work to compile the estimate; as you may recall I had stipulated that the forester chosen should be acceptable to both the Cobbs and the Ministry, so if you have any problems with Mr. Standish's credentials or work, please advise me immediately. Otherwise I would appreciate your confirmation that you consider him acceptable.

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You will also note that Mr. Standish has proposed, in addition to the basic timber cruise, two optional studies, one a soil survey, and the other the compilation of volume tables for immature Douglas Fir. Since these optional studies will improve the accuracy of the estimate, I believe they should be included as part of the project, but I would appreciate any comments you might have on this matter.

In view of the importance of completing this work before bad weather poses any additional problems, I would appreciate your comments on the above points as quickly as possible. If you prefer you could call me to discuss the matter; in any case I would hope to have your response by November 25th.

Yours sincerely,

Suzanne Veit

Karl A. Friedmann
Ombudsman

Enclosure

Province of
British Columbia

OFFICE OF THE
DEPUTY MINISTER

Ministry of
Forests

Parliament Buildings
Victoria
British Columbia
V8W 3E7

1981-12-04

File: 160-7

Dr. Karl A. Friedmann,
Ombudsman,
Legislative Assembly,
8, Bastion Square,
Victoria, B.C.
V8W 1H9.

Dear Dr. Friedmann:

Re: James and Dorothy Cobb -
Louis Creek, B.C.

My staff has reviewed the proposal submitted by Talisman Land Resource Consultants for estimating the probable volume present on the area in question prior to logging.

Before commenting on Talisman's proposal there are several points on which there must be mutual understanding and agreement so as to ensure that any estimate of the probable volume of timber on the area prior to cutting is properly interpreted and applied to the problem under investigation.

1. An estimate of the probable volume of timber on the area prior to logging is just that: an estimate of what was available for removal and utilization to the standard assumed in the calculation. It in no way will prove that the scale has been inaccurate or incomplete. In immature timber the difference between the cruise and the scale may be large and the degree of utilization practiced is a major factor.

2. The licence to cut did not specify a utilization standard, it only stipulated that any trees 8" in diameter and larger measured outside the bark at a point 12" from the ground, if cut, must be utilized to a top diameter of 6" (emphasis ours). While the logging inspection report indicates that timber was cut to an average stump height of 12" and to a top diameter of 5", there is no indication that all timber was cut and the report states that 230 acres had been cut selectively. Residual timber was windrowed and burned afterwards.

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3. Your investigation report to me of 81-09-14 mentions inadequate timber marking as one of the shortcomings in the scaling procedure. Under the Forest Act in force then and in the licence to cut, marking was the responsibility of the licensee and it is not the duty of the scaler to ascertain the origin of the logs if no mark is visible.

4. While old aerial photos will provide a record of the extent, type and crown density of the timber present before cutting, the matter of delineating timber types and correlating them with types still in existence will be a matter of professional judgment. The degree of consensus and comparability that will be reached will have a major impact on the volume estimate.

5. Stands outside the area that were similar in age, species and density in 1972, and growing on similar sites, have grown since then and the present volume will be different from what it was 10 years ago. The volume of ingrowth, increment and depletion through dying-off of trees will have to be estimated and applied to bring the 1981 volumes to what they may have been in 1972.

For these reasons, any procedure, no matter how sophisticated will provide no more than an estimate of what may have been present on the area.

We do not consider that the proposed optional work, namely the soil survey and the sampling of trees for local volume tables would result in a significantly improved estimate, and therefore would recommend that it be deleted from the survey.

We fully agree with the consultant's statement that "it must be recognized that the final (net) volume estimate will be probalistic". We do not agree, however, with his comment that the Ministry refuses to acknowledge that cruises indicate that the volume available for logging appears to have been greater than the volume scaled. What we disagree with is the inference that since the cruise indicates a larger volume than the scale, the latter therefore was wrong. By reason of the points made above, there is no way of estimating, in hindsight, the volume that was in fact extracted and delivered to Holding's mill. The Ministry has made this point from the start of this inquiry, and the consultant also accedes to this by saying "... it is emphasized that any method used could be challenged on technical grounds. The population that we want to estimate does not exist any more".

For these reasons, we find it difficult to rationalize a reconciliation of the scale and any such attempt will have to be speculative.

With elimination of the optional work, the cost estimate calls for an expenditure of $15,250. My Ministry's estimates do not include funds for work resulting from appeals to the Ombudsman, and I am making a request to Treasury Board for a special warrant. Until such a time that this warrant is approved, or Treasury directs me to other sources, I cannot give assurance that funds to cover this work will be available. Treasury Board policy also requires that this type of work be put out to tender.

I would also recommend that before a contract is issued to Talisman, agreement be reached on utilization standard and that the sampling intensity be reviewed so as to ensure that all aspects of the work are of harmonizing reliability.

I will advise you as soon as I have received direction re funding from Treasury Board. In the meantime, my staff will review the matter of sampling intensity.

Yours truly,

T. M. Apsey,
Deputy Minister.

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Province of
British Columbia

OFFICE OF THE
DEPUTY MINISTER

Ministry of
Forests

Parliament Buildings
Victoria
British Columbia
V8W 3E7

- 47

1981-12-18

File: 160-5

292917

Dr. Karl A. Friedmann,
Ombudsman,
Legislative Assembly,
8, Bastion Square,
Victoria, B.C.
V8W 1H9

Dear Dr. Friedmann:

Re: James & Dorothy Cobb.

Further to my letter of 81-12-04, please be advised that funds up to $15,250 have been secured for work to be carried out by Talisman Land Resource Consultants in connection with this case.

Please have your staff consult with our Valuation Branch to work out the details of the agreement with the consultant.

Yours truly,

T. M. Apsey,
Deputy Minister.

February 16, 1982

Our File: 81-098(II)

Mr. Hans Waelti, R.P.F.
Director
Valuation Branch
B.C. Ministry of Forests
1450 Government Street
Victoria, B.C.
V8W 3E7

Dear Mr. Waelti:

I am writing to confirm my discussions with you and Mr. Bradshaw on January 25, 1982 concerning the estimation of timber volumes from District Lot 1679, K.D.Y.D. near Adams Lake.

Approach and Cruise Design

Rather than a regression estimate based on aerial photo and ground plot data, we will use a perimeter cruise employing stratified random sampling. Timber types within the cleared area will be defined from the Ministry of Forests' Inventory Branch forest cover map (sheet 82-M-4-b, 1968). This map shows three types:

* F 330-M + F Vets
* F 630-M + F Vets
* F 841-M

Areas which were not logged will be determined from a map in Inland Timber Managements Ltd.'s report dated July 1980. These areas will be "removed" for purposes of volume compilation.

Comparability of perimeter timber types will be established through detailed aerial photograph interpretation including estimates of tree heights, crown closure and the number of veterans per hectare. Photo interpretation will be supplemented by existing information such as forest inventory data and the 1976 perimeter cruise report.

As a target we will attempt to attain a precision of 10% at two standard errors. However, since we cannot know the magniturde of coefficients of variation in advance with certainty and are operating on a fixed budget, we cannot guarantee that we can, in fact, attain that level of precision.

Cruising Methods and Standards

Procedures will follow current Ministry of Forests standards for cruising in the Kamloops Forest Region. All measurements will be made and recorded in metric units. Final volume estimates will be converted to Imperial units.

Double prism sampling will be used; a full sweep with two prisms will be made at each sample point. Final choice of prism BAF's will be made following some further analyses and, possible, some trials in the field. In general, it is intended to sample between 6 and 16 trees per sample point.

Back-Dating of Estimates to 1972

Several (about 10-20) increment core samples will be taken over the range of tree diameters for each species in each type to determine Dbh in 1972. Trees which do not then meet the minimum Dbh will be "removed" for volume compilation. Volumes will be compiled from the remaining trees based on their reduced Dbh.

Heights will be adjusted from 1976 perimeter cruise data supplemented by whorl counts, where possible.

No adjustments will be done for fir veterans.

Mortality may be estimated by recording the occurence of recent windfalls and snags.

Cruise Compilation

At least two volume estimates will be presented to reflect different utilization assumptions. This will allow comparisons with previous perimeter cruise data and illustrate the effect of varying levels of utilization. One assumed level will reflect contract cutting specifications and information from

Forest Service logging inspection reports. Another will assume close utilization standards. Other levels may also be assumed if necessary.

Budget

The following budget assumes (as we have been advised) that free accomodation will be available in Mr. Cobb's cabin on the area and is based on the following daily rates.

J.T. Standish, R.P.F.	$400.00/day
J.P. Demaerschalk, Ph.D.	400.00/day
Forest Technicians	275.00/day
Drafting	200.00/day

A total of fifteen-thousand two hundred and fifty dollars ($15,250.00) will be required to conduct the proposed work. A breakdown of estimated budget requirements follows.

Project Mobilization and Sampling Design	$1,500.00
Photo Interpretation and Measurements and Map Production	1,500.00
Field Work and Travel Time	8,000.00
Travel Expenses	2,800.00
Cruise Compilation	650.00
Reporting	800.00
TOTAL	$15,250.00

Schedule

Aerial photograph interpretation and sampling design is in progress and should be completed before the end of February. We tentatively plan to be in the field early in March, depending on snow conditions. If possible, cruising while the snowpack is deep will be avoided; however, field work and billings should be completed before March 31, 1982 to avoid budgetary complications. We will monitor field conditions and advise you of the situation during early March.

I trust that the foregoing information will meet your requirements. If you have any questions please contact me at your convenience.

Looking forward to your early reply.

Yours truly,

J.T. Standish, R.P.F.
TALISMAN LAND RESOURCES

Province of British Columbia

OFFICE OF THE DEPUTY MINISTER

Ministry of Forests

51

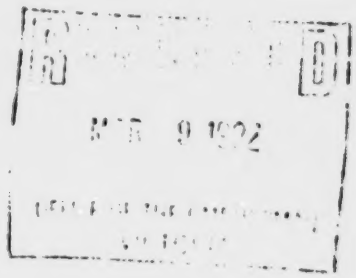
Parliament Buildings
Victoria
British Columbia
V8W 3E7

cc E. Rivers
Office of the Ombudsman

1982-03-05

File: 990-1

IN DUPLICATE:



Talisman Land Resources Consultant,
300-842 Thurlow Street
Vancouver, B.C.
V6E 1W2

Attention: Mr. J.T. Standish, R.P.F.

Dear Sir:

Re: Letter of Agreement for the Estimation of Volumes from District Lot 1679, K.D.Y.D. Near Adams Lake

1. Talisman Land Resource Consultant agrees to undertake the study in co-operation with the Ministry of Forests to cruise and prepare a final report under the terms of reference in Schedule A. The study is to be completed and the reports submitted to the Ministry of Forests by March 31, 1982 depending on snow conditions. Cruising will not take place in heavy snow. The Ministry of Forests shall be consulted prior to the start of any work after March 31, 1982.

2. Talisman will prepare an itemized invoice for payment by the Ministry of Forests.

3. Direct costs shall include salaries and expenses at the following rates:

Professional staff (J.T. Standish, J.P. Damaerschalk)	- $400/day
Forest Technicians	- $275/day
Drafting	- $200/day

The total cost of this project to the Ministry of Forests shall not exceed $15,250.00.

. . . 2/

If you are in agreement with the above terms and conditions please indicate so by signing below and returning the original to this office.

Yours truly,

T.M. Apsey
Deputy Minister

I agree to the above terms and conditions.

Signature:_____

Title:_____ Date:_____

Schedule A

Terms of Reference - Estimation of Timber Volumes on District Lot 1679, K.D.Y.D.

1. General

Cruising Standards and procedures will be as specified in the M.O.F. Provincial Cruising Manual plus any supplemental instruction specific to the Kamloops Region Office. All measurements will be made and recorded in metric units. Final volume estimates will be converted to Imperial units. Double prism sampling will be used; a full sweep with two prisms will be made at each sample point. The same prism size will be maintained within a forest type. Final choice of prism BAF's will be made following some further analyses and, possibly, some trials in the field. In general, it is intended to sample between 6 and 16 trees per sample point. If a "nil" plot occurs it will be recorded as such to be used in the compilation. A check cruising schedule will be arranged between the consultant and the Cruising Supervisor, Kamloops Region.

2. Approach and Cruise Design

Rather than a regression estimate based on aerial photo and ground plot data, a perimeter cruise will be employed using stratified random sampling. Timber types within the cleared area will be defined from the Ministry of Forests' Inventory Branch forest cover map (sheet 82-M-4-b, 1968). This map shows three types:

* F 330-M + F Vets
* F 630-M + F Vets
* F 841-M

Areas which were not logged will be determined from a map in Inland Timber Managements Ltd.'s report dated July 1980. These areas will be "removed" for purposes of volume compilation.

Comparability of perimeter timber types will be established through detailed aerial photograph interpretation including estimates of tree heights, crown closure and the number of veterans per hectare. Photo interpretation will be supplemented by existing information such as forest inventory data and the 1976 perimeter cruise report.

3. Cruise Intensity

A precision of $\pm$ 10% at two standard error will be the target within the limits of the C.V.'s and the fixed budget. Nowhere will it exceed $\pm$ 15% at two standard error.

4. Back-Dating of Estimates to 1972

Several (about 10-20) increment core samples will be taken over the range of tree diameters for each species in each type to determine Dbh in 1972. Trees which do not then meet the minimum Dbh will be "removed" for volume compilation. Volumes will be compiled from the remaining trees based on their reduced Dbh.

Heights will be adjusted from 1976 perimeter cruise data supplemented by whorl counts, where possible.

No adjustments will be done for fir veterans.

Mortality may be estimated by recording the occurrence of recent windfalls and snags.

5. Cruise Compilation

At least two volume estimates (based on Damaerschalk 1957 Taper Equations) will be presented to reflect different utilization assumptions. This will allow comparisons with previous perimeter cruise data and illustrate the effect of varying levels of utilization. One assumed level will reflect contract cutting specifications and information from Forest Service logging inspection reports.

Suggested standard:
Top D.I.B. = 15 cm (6")
Stump Ht. = 45 cm (18")
Minimum DBH = 17.5 cm plus
Less Decay, Waste and Breakage (M.O.F. Loss Factors)

Another will assume close utilization standards. Other levels may also be assumed if necessary.

Close "U" standard
Top D.I.B. = 10 cm
Stump Ht = 30 cm
Min. D.B.H. = 17.5 cm plus
Less Decay, Waste and Breakage (M.O.F. Loss Factors)

Province of
British Columbia

OFFICE OF THE
DEPUTY MINISTER

Ministry of
Forests

55

Parliament Buildings
Victoria
British Columbia
V8W 3E7

1982-07-13

File: 160-7
0292917

Dr. Karl A. Friedmann,
Ombudsman,
Legislative Assembly,
8, Bastion Square,
Victoria, B.C.
V8W 1H9

Dear Sir:

Reference is made to the complaint of Mr. James Cobb concerning the scale returned against timber cut on Lot 1679 KDYD and the Estimation of Timber Volumes made by Talisman Land Resource Consultants.

The Talisman work confirms the volume estimates previously obtained from average lines of inventory data and indicates that Mr. Boulton's perimeter cruise on behalf of Mr. Cobb estimated volumes to close utilization standards. The Ministry contends that utilization standards practiced in 1972 on the area in question were not close utilization standards and that this fact explains the much lower scale volume. Confirmation that close utilization standards were not practiced is found in the stump cruise made by Mr. Boulton which computed volumes only 18% greater than the scale. The 18% difference can be explained as being due to Mr. Boulton computing tree volumes to a top diameter smaller than that of the top diameter of the logs removed. The difference between Mr. Boulton's stump cruise and his perimeter cruise can only be explained as being due to a number of trees being left uncut and excluded from the stump cruise.

I have summarized average volumes computed by Talisman to illustrate how different figures are obtained from the same base data if different utilization standards are assumed;

Minimum Dia.at Breast Height Inches	Stump Height Inches	Top Diameter Inches	Volume Cubic Feet
7.1	12	4 (close utilization)	754,645
7.1	12	6	671,984
7.1	18	6	659,920
9.1	12	6	624,033
9.1	12	7	591,266
9.1	18	8	487,560
11.1	12	6	535,511
11.1	18	8 (intermediate utilization)	457,618

You will note that if the volumes of all trees 11.1 inches and over at breast height are computed to a six inch top diameter a volume is obtained that is 17.2% greater than that obtained for trees to an eight inch top diameter. You will also note that there is a considerable difference between the volumes computed for close and intermediate utilization standards.

The intermediate standard of utilization was a minimum requirement up to 1972. From 1965 onward we have been encouraging utilization to a close utilization standard but a review of 1981 scale data reveals that Holding Lumber Company minimum top log diameters averaged 14 cm or 5.5 inches and that even at this date full close utilization of 10 cm is not obtained. There are a number of factors which have prevented the industry from utilizing smaller logs, including extra costs in logging and manufacture and a lower value end product.

On the information provided there is no evidence that Mr. Cobb's timber was incorrectly scaled and we ask that this investigation be closed.

Yours truly,

T. M. Apsey,
Deputy Minister.

DF

PROVINCE OF BRITISH COLUMBIA | FOREST SERVICE

DEPARTMENT OF LANDS, FORESTS AND WATER RESOURCES
RECEIVED
AUG 3 1972
FOREST DISTRICT
Kamloops, B. C.

LOGGING INSPECTION REPORT

Area L/C 319 Timber Mark FL/319

Location Cottonwood Pt. of Adams Lake (Near what known point, surveyed or unsurveyed) Atlas Ref. 82L/SW/A-2

Forest District Kamloops R.D. No. 5 P.S.Y.U., ~~XXXXX~~ Adams (Name or number) July 27, 1972 (Date of report)

If a timber sale, give date of expiry July 15, 1972 July 26, 1972 (Date of examination)

If a timber sale, has the logging plan been approved? — (Yes or no)

If a close utilization licence, has the operator a copy of the cutting specifications? — (Yes or no)

1. (a) Name James E. Cobb (Licence, owner, or mark holder) R.R. #1, Louis Cr. (Address)

(b) Name of operator Jim Hill & George Williamson (Address)

(c) Date this operation ~~commenced~~ recommenced April 16 ..19 72 Terminated Active ..19

2. Scaling After scaling at Holdings Mill (Is material from this area mixed with other? Where is scaling done? Are scaling regulations being complied with?) Yes

Yes (Does any "not to scale" Report exist? If not, is action recommended concerning discrepancy? Note sections 3, 5 (c).)

3. Log marks FL/319 (Mark used) Per cent marked 40% Where is marking done? on Lake Shore (State definitely.)

(If more than one mark is being used, state areas on which each is being used and precautions taken to prevent mixing of different classes of logs.)

4. Conditions of boundary lines Yes (Was any section of boundary traced during this inspection? Show on sketch map attached.)

No (Does any section need running?) Not with due care. (Any direct of trespass? Report trespass on Form F.S. 91.) (Trespass file number.)

5. (a) *Cut:* Quantities shown below are for (Operation to date.) (In table below give scale if possible.)

Product	S/Logs				
F & B	5 Mcf.	Est.	scattered F. & B		
Decked on area	1 Mcf. (Est.)				
Decked or watered off area	120 Mcf. (Est.)				
Sawn or shipped	69174 S & R 26900	March 13, 1972			
Total cut					
Cut since last inspection					

Amount billed 69,174 Date Jun 172 (For District Forester's use only.) Show last S & R account number.) S&R #26980

5. (b) *Area cut over:*

	Clear Cut	Selectively Cut	F & B. Only
Total to date	123 acres	acres	acres
Since last inspection	123 acres	acres	acres

5. (c) *Comparison of average volume per acre:* Cruise or marked Cut (If discrepancy, comment in part 10.)

6. Disposal of S/Logs (Product.) Holdings Ltr. Co. (Sold to. Name of mill or broker.) Adams Lake. (Address.)

Date of last shipment Approximate amount

7. (a) Logging system Cat skid and arch Truck skid to Lake. Booned to Mill (If ground skid, sky line, tractor truck, gravity, horses, hand logging, etc.)

(b) Equipment 1 H.D 11, 1 TD 15, 1 540 Skidder, 1 Kenworth Arch Truck (Its use and value.) (Number of men employed.)

(c) Logging plan N/A (Are operations conducted in accordance with approved plan? If not, what action taken?)

8. Slash disposal Area to be land cleared (What disposal of slash has taken place? (Have you issued written instructions?) (Fires hazard from slash at present burning? (How much regeneration and timber would be destroyed? (If soil is peaty or shallow, would it be injured by broadcast burning at proper season?) (Condition of roads.) (Condition of landings.)

N/A N/A

Form F.S. 89 (1) — 0

9. Waste F - 5% Butt Rot
(Give percentage and nature of defects in timber left standing.)

Yes
(Are stumps and tops being cut with least possible waste?)

(Is felling done to avoid unnecessary breakage? Are log lengths varied to provide for complete utilization?)

Average stump height 12" Average top diameter 5" Per cent of breakage 2%

10. INFORMATION to be supplied for all REPORTS (for assessment of charges under Part 2 and/or conditions 3 (i) of Contract on timber sales and assessment of royalties on other areas):—

Species	Volume of Trees Left Standing Designated to Be Cut	Cut Products Left in Woods	Waste in— Stumps	Waste in— Tops	Trees Cut or to be cut Designated to Be Left	Unlisted Trees
F	6 ccF.					
C	2 ccF.					

Area uncut, merchantable:	Area F. & B. only:	Area non merchantable:	Area on which all Contract conditions fulfilled:
..... acres	..... acres	..... acres	..... acres

11. Have reserved and marked trees been left undamaged? N/A

12. Have all special clauses been fulfilled? No

13. Instructions to operator Attached
(Date of instructions. Attach copies. Have prior instructions been fulfilled?)

14. Final report on sale Area to be land cleared
(Do you consider area left in good condition for new forest?)

(If clear cut, are there sufficient seed trees left for satisfactory regeneration?)

15. (a) Slash disposal Area to be land cleared.
(State cost and describe work to be done.)

(b) Mill-site clean-up N/A
(State cost and describe work to be done.)

16. Recommendations Instructions attached re: Scattered F. & C. Recommend extension be granted
(Make here any recommendations which you consider advisable.)

1 month
(Expected date of next report.)

(Signature) ..... (Title) Assistant Ranger.

17. Recommendations
(State if any action has been taken on this report.)

Approved: .....
District Forester.

Noted: .....
(Management officer.)

6 Form F.S. W (2) 8

CLAREMORE — — 59 — ZEALAND

Survey boundary: Black
Unsurveyed boundary: Black broken line
Lines traced on fire boundary): Red full line
Lines traced during current inspection: Hatched red
Boundary lines not traced: Red broken line
Type line boundary: Black broken and dotted line
Survey posts visited: Red O
Railway grade: Black
Railway grade, abandoned: Black
Logging road: Black
Log landing: Black
Area timber felled, not skidded: Hatched yellow

Note.—For abbreviations and further map symbols see Management Manual and Forest Inventory Manual

FOREST COVER

Merchantable timber: Dark green.
Immature timber (fully stocked), all ages: Light green.
Logged (not restocked): Yellow.
Logged and burned (not restocked): Orange.
Burned (not restocked): Red
Non-commercial cover on productive forest-sites, deciduous or coniferous: Blue
Non-productive sites (scrub forest): Grey.
Non-productive alpine or lowland rock or other barren areas. Leave uncoloured but qualify with type symbol.
Cultivated: Brown
Open grazing and pasture land (lowland or alpine): Purple
Weld has meadow (not cultivated): Purple.
Suitable for cultivation: Hatched brown over forest type

Map of L TC 319

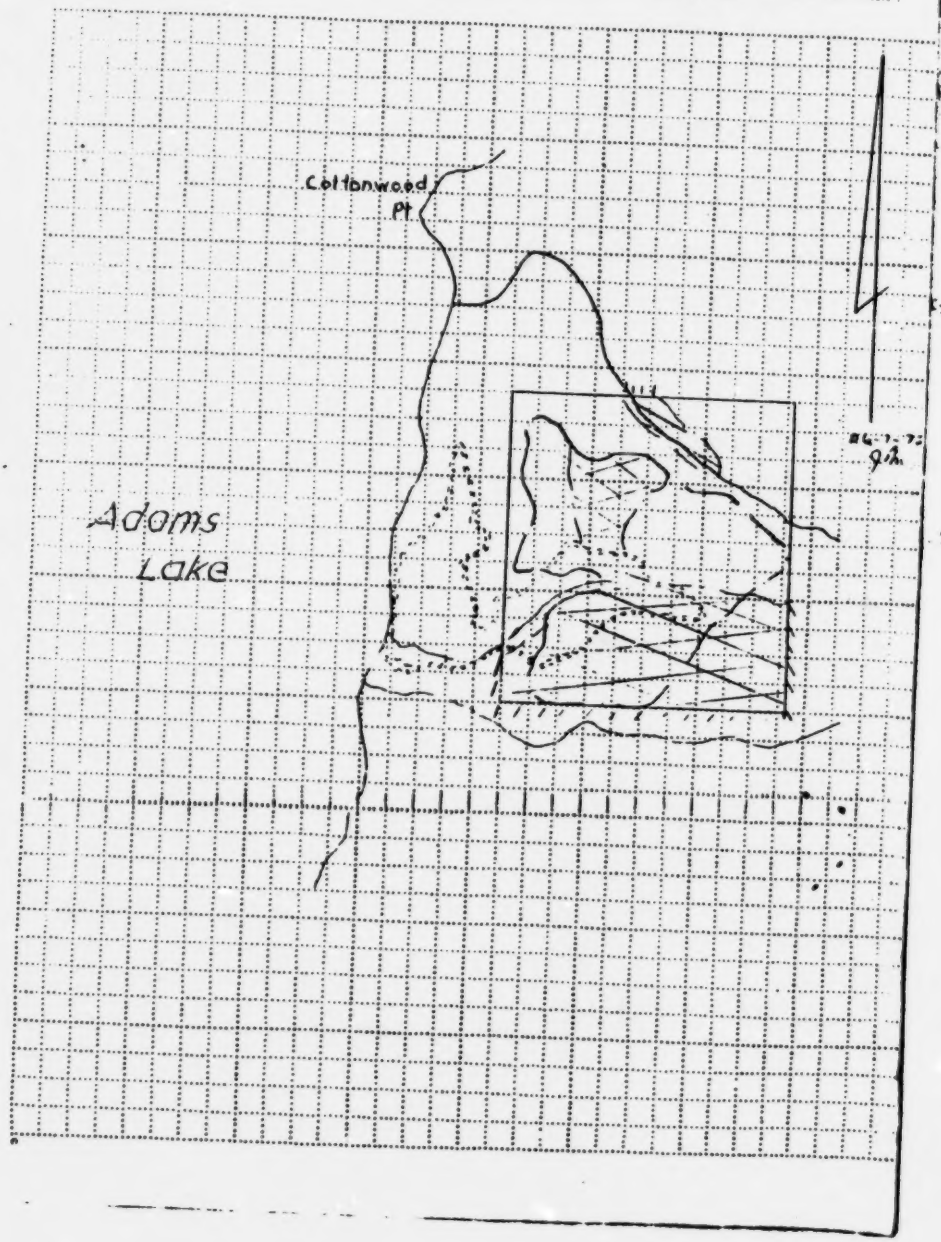
Atlas Ref. R22 N/S

Scale 20 chains 1 inch — Scratch out scales not applicable

Region 1/4 Compt.

Air photos

FS 351



F - - 60 DF

PROVINCE OF BRITISH COLUMBIA | FOREST SERVICE | DEPARTMENT OF LANDS, FORESTS & WATER RESOURCES

RECEIVED
MAR 15 1973
DISTRICT FORESTER
KAMLOOPS, B.C.

LOGGING INSPECTION REPORT

If a timber sale, study the contract carefully before making your inspection and report. Do not use this form if you did not have time to make a proper inspection.

Area License to Cut # 319 (T.S. No. T.L. No.) Timber Mark X6319

Location Cottonwood Point of Adams Lake (How what known point, surveyed or unsurveyed.) Atlas Ref. R82N/SW. (A-2)

Forest District Kamloops R.D. No. 5 P.S.Y.U., ~~Unit~~ Area Adams (Name or number.) March 6th, 19 73 (Date of report.)

If a timber sale, give date of expiry July 15th, 1973 March 6th, 19 73 (Date of examination.)

If a timber sale, has the logging plan been approved? — (Yes or no.)

If a close utilization licence, has the operator a copy of the cutting specifications? — (Yes or no.)

1. (a) Name J. Gobb, (Lessee, owner, or mark holder.) R.R. # 1, Louis Creek, B.C. (Address.)

(b) Name of operator Jim Hill & George Williamson (Address.)

(c) Date this operation ~~commenced~~/recommenced April 19 72 Terminated September 19 72

2. Scaling Yes- after scaling Holding S/L. (If material from this area mixed with other? Where is scaling done? (Are scaling regulations being complied with?)

(Is scaling satisfactory? Report on F.S. 418.) (If not, is action recommended concerning discrepancy? Note sections 3, 9 (c).)

3. Log marks X6319 (Marks used.) Per cent marked Unknown Where is marking done? On area (State definitely.)

(If more than one mark is being used, state areas on which each is being used and precautions taken to prevent mixing of different classes of logs.)

4. Conditions of boundary-lines Yes (Was any portion of boundary traced during this inspection? Show on sketch map attached.)

No No

5. (a) Are quantities shown below are for (Operation to date.) (In table below give scale if possible.)

Product	S/Logs					
F. & B.	-					
Decked on area	Nil					
Decked or watered off area						
Sawn or shipped						
Total cut	437,613 to S.^ R.# 29696					
Cut since last inspection						

Amount billed 437,613 Scale Slip # R# 29696 (For District Forester's use only. Show last S. & R. account number.)

5. (b) *Area cut over:*	Clear Cut	Selectively Cut	F. & B. Only
Total to date	acres	230 acres	acres
Since last inspection	acres	acres	acres

5. (c) *Comparison of average volume per acre:* Cruise or marked — Cut —

6. Disposal of S/Logs: (Product.) Belding Lumber Co. Ltd. R.R. # 1, Chase, B.C. (Sold to: Name of mill or broker.) (Address.)

Date of last shipment — Approximate amount —

7. (a) Logging system Cat skid to landing, arched to lake, boomed to mill. (High lead, skyline, tractor truck, gas donkey, horses, hand logging, etc.)

(b) Equipment — (In use and value.) (Number of men employed.)

(c) Logging plan — (Are operations conducted in accordance with approved plan?) (If not, what action taken?)

8. Slash-disposal Nil Yes No (What disposal of slash has taken place?) (Have you issued written instructions?) (Does burning from slash warrant burning?) (How much reproduction and timber would be destroyed?) (If soil is peaty or shallow, would it be injured by broadcast burning at proper season?) (Condition of mill-site.) (Condition of landings.)

Area to be last cleared.

N/A To be disposed of with land clearing.

Form F.S. 89 (1)—b

"FINAL"

FOR USE BY FIRE SPACE

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9. Waste (a) F. 5% butt rot
(Percentage cull by species of timber cut to date. Is remaining unlogged stand similar?)

(b)
(Give percentage and nature of defects in timber designated to be cut by species left standing within the logged area.)

(c) Yes
(Is felling done to avoid unnecessary breakage?) (d) Per cent of breakage 2%

(e) Yes
(Are log lengths varied to provide for complete utilization?) (f) Yes
(Are stumps and tops being cut with least possible waste?)

(g) Stump height: Range 20" Average (h) Top diameter: Range 5" Average

10. INFORMATION to be supplied for all REPORTS (for assessment of charges under Part 2 and/or conditions 3 (f) of Licence on timber sales and assessment of royalties on other areas):—

Species	LOGGING NOT COMPLETE: Volume of Trees Left Standing Designated to Be Cut— In Unlogged Area	LOGGING NOT COMPLETE: Volume of Trees Left Standing Designated to Be Cut— In Logged Area	LOGGING NOT COMPLETE: Felled and/or Bucked	LOGGING CONSIDERED COMPLETE: Unrecovered Wood — Available	LOGGING CONSIDERED COMPLETE: Unrecovered Wood — Unavailable

Area uncut, merchantable:	Area F. & B. only:	Area non-merchantable:	Area on which all contract conditions fulfilled:
0C725	0C726	0C727	0C728

11. Have reserved trees or young growth been damaged? —
(Yes or no.) (If yes, state number of trees or acreage and action.)

12. Have all special clauses been fulfilled? Yes

13. Instructions to operator
(Date of instructions. Attach copies. Have prior instructions been fulfilled?)

14. Final report on sale Area to be land cleared for agricultural purposes.
(Is silvicultural treatment successful? Is area left in good condition for new harvest?)

(If clear-cut, are there sufficient seed-trees left? Should area restock naturally? If treatment not successful, what action do you recommend?)

(Should sale area be classed as forest land and retained for growing future forest crops?)

15. (a) Slash-disposal Area to be land cleared.
(State cost and describe work to be done.)

(b) Mill-site clean-up N/A
(State cost and describe work to be done.)

16. Recommendations Recommend Licence to Cut be cancelled after the Licensee has been notified.
(Make here any recommendations which you consider advisable.)

(Expected date of next report.)

(Signature) J. Money (Title) Asst. Ranger

17. Recommendations
(State if any action has been taken on this report.)

Approved: [illegible]
District Forester.

Form F.S. 39 (2) Noted:
(Management office.)

Survey boundary: Black
Unsurveyed boundary: Black
Lines traced on the boundaries
Lines traced during current operations: Hatched red
Boundaries lines not traced: Red broken line
Topo. line boundaries: Black broken and dotted line
Surveys posts located: Red
Railway grade: Black
Railway: grade abandoned: Black
Logging: road: Black
Log Landing: Black
Area timber felled, not cleaned: Hatched yellow

Note — For abbreviations and further map symbols see Management Manual and Forest Inventory Manual

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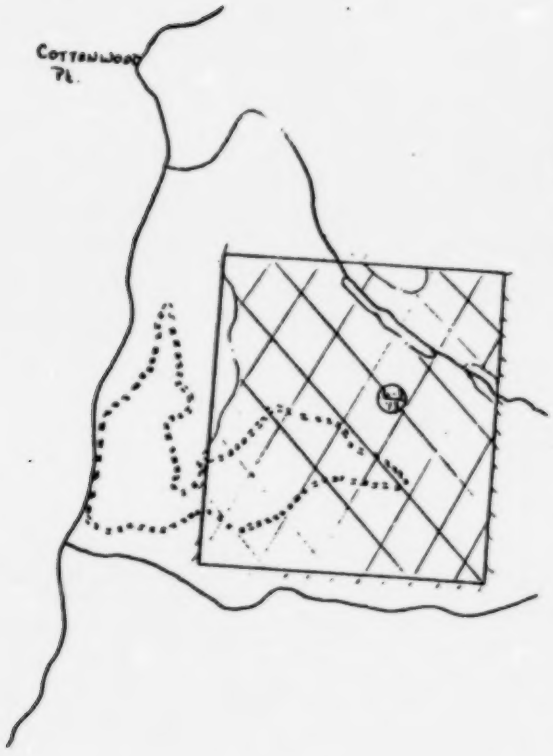
Merchantable cover: Dark green.
Immature timber (fully stocked), all ages: Light green.
Logged (not restocked): Yellow.
Logged and burned (not restocked): Orange.
Burned (not restocked): Red.
Non-commercial cover on productive forest sites, deciduous or coniferous: Blue.
Non productive sites (scrub forest): Grey.
Non productive alpine or lowland rock or other barren areas: Leave uncoloured but qualify with type symbol.
Cultivated: Brown.
Open grazing and pasture land (lowland or alpine): Purple.
Wild hay meadow (not cultivated): Purple.
Suitable for cultivation: Hatched brown over forest type.

Map of L.T.C. 319

Scale: 20 chains = 1 inch
40 chains = 1 inch
80 chains = 1 inch
Scratch out scales not applicable

Atlas Ref. 82N/SW/42
Region 4Y Compt.
Air photos



Legislative Assembly
Province of British Columbia

OMBUDSMAN

8 P[illegible]on Square
Victoria
British Columbia
V8W 1H9
Telephone (604) 387-5855
Zenith 2221

63

File No: 80 1243

October 13, 1982

Mr. T.M. Apsey
Deputy Minister
Ministry of Forests
1450 Government Street
Victoria, B.C.
V8V 1X4

Dear Mr. Apsey:

Re: James and Dorthy Cobb
Louis Creek, B.C.

As you will recall, I provided Mr. and Mrs. Cobb with a copy of the Telisman report and of your July 13, 1982 letter so that they might comment on the contents of these documents. I have now received the Cobbs' comments and those of their forester, Mr. Boulton.

I think it might be useful at this point to review the progress of this complaint to date. On September 14, 1981 I wrote to advise you of my preliminary conclusions and to suggest a possible resolution of the matter. I will not repeat the details included in that letter, but based on my investigation it seemed clear that the Ministry had permitted Holding Lumber Company to use a scaling procedure which deviated from usual Ministry practice in a number of respects, and that at the same time the Ministry had assured Mr. Cobb that normal scaling procedures were being followed by Holding. It was my conclusion that because of the Ministry's involvement in the matter, there was a good possibility that the Cobbs were subjected to a short scale.

The difficulty of course is that although the weight of the evidence may point to a short scale, there is no means of proving conclusively that a short scale did in fact take place. The timber in question is gone, and the lot is planted in alfalfa.

However, in an effort to resolve the matter, and to provide the Cobbs with an opportunity to determine to the extent possible whether or not they were subjected to a short scale, I resurrected a suggestion which Mr. Waterland had earlier considered. The suggestion was that a professional forester be retained to provide an estimate of the timber taken off Mr. Cobb's lot, and that this estimate be used as the basis for a settlement of the complaint.

...2

Your response (October 20, 1981) noted that this proposal assumed that all the timber cut was sent to Holding Lumber Co., and that there were practical difficulties in obtaining an accurate estimate at this point. You suggested we obtain the advice of a professional forester on the practicalities of making the estimate, and on the reliability of the estimate. You stated that if we wished to proceed you would request that money be made available to pay the forester's fees involved.

I took your advice and retained the services of J.T. Standish R.P.F., of Talisman Land Resource Consultants, for the purpose of advising as to the practicality and reliability of the proposed estimate. Mr. Standish completed this initial phase in November, 1981, and concluded that the gross volume of timber removed from Mr. Cobb's lot could be estimated at a level of precision comparable to Ministry of Forests' cruising standards, while the net volume could be reasonably estimated on the basis of logging inspection reports. Mr. Standish also outlined two optional studies (in addition to the timber cruise) which he felt would improve the accuracy of the estimate somewhat.

On November 18, 1981, I wrote to you to ask if you had any objections to retaining Mr. Standish for the compilation of the estimate, and to ask for your comments on the two optional studies. Your response (December 4, 1981) recommended that the optional studies be deleted as you did not consider that they would significantly improve the accuracy of the estimate. No objections were made to the use of Mr. Standish for the main study.

You also made the point that no matter how sophisticated the procedure used, the work would still only result in an estimate of the volume of timber taken off the lot, since the timber in question no longer existed. You emphasized that the level of utilization is a major factor in the accuracy of such estimates, that the licence-to-cut did not specify the level of utilization, that not all of the timber may have been cut off the lot, and that perimeter stands (used for comparative purposes) would have changed in volume during the past 10 years. You also recommended that before a contract was issued to Talisman there should be agreement on utilization standards and sampling intensity.

Mr. Standish met with your staff on these matters, and on March 5, 1982 you entered into a contract with Mr. Standish to complete the necessary work. The fieldwork was completed in March, and Mr. Standish filed his report on June 3, 1982. Mr. Standish had prepared estimates based on four levels of utilization; those four estimates of net volume ranged

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from 624,033 cubic feet to 754,645 cubic feet. (The volume scaled by Holding was 443,000 cubic feet.) You extended those estimates to include an intermediate level of utilization, and provided estimates ranging from 457,618 cubic feet to 754,645 cubic feet.

These latter figures were provided in your July 13, 1982 letter; you took the position that close utilization standards were not practiced on Mr. Cobb's lot, and that the difference between the scaled volume, and the estimates provided by Mr. Cobb's forester and those provided by Mr. Standish was attributable to different utilization standards. You concluded that there was no evidence that Mr. Cobb's timber was incorrectly scaled, and requested that the investigation be closed.

I'm afraid I cannot agree that the investigation should be closed because I do not believe that a difference in utilization standards accounts for the difference between the scaled volume and the estimates. A review of our correspondence on this matter indicates that you have raised three primary arguments against the estimates which have been compiled:

i) not all the timber cut was sent to Holding;
ii) not all the timber was cut off the lot;
iii) close utilization was not practiced on that lot at that time.

I believe that sufficient information is available, or can be obtained, to disprove each of these points.

i) Not all the timber cut was sent to Holding: You mentioned this as a possible problem in your letter of October 20, 1981.

   - Mr. Cobb has stated that with the exception of a small volume of poles sold to Carney Pole Company, all the timber cut went to Holding Lumber.

   - There is no road access into the lot. All timber removed from the lot would have to be taken out via the lake. I understand that at that time there was only one tug boat company working on the lake - Adams Lake Towing Company, operated by Frank Fraser. Mr. Fraser had a contract with Holding Lumber under which he towed all timber dumped in the lake to Holding's mill. Also, I understand that there were no other sawmills at that end of the lake at that time.

ii) Not all the timber was cut off the lot: You have stated that the logging inspection report contains "...no indication that all timber was cut and the report states that 230 acres had been cut selectively. Residual timber was windrowed and burned afterwards".

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- Mr. Cobb has stated that approximately 240 acres were clearcut; his intent in obtaining the lot was to develop hayland and pasture, which would necessitate clearcutting; he further contends that since all machinery had to be barged across the lake, it would have been very uneconomical not to make use of all the available timber.

- You correctly pointed out that the logging inspection report states that 230 acres had been cut selectively; this information is taken from the final inspection report dated March 6, 1973. I do not know why that statement was made; the figure may have been recorded in the wrong column in error, just as an error appears to have been made on the second page of that report by recording stump height and top diameter in the 'range' rather than the 'average' section. I have noted that the interim logging inspection report (dated July 27, 1972) states that as of that date 123 acres had been clearcut. Both reports indicate the area was to be land cleared.

- George Williamson, a logger who did most of the logging for Mr. Cobb, is willing to swear an affidavit that the land was clearcut; if necessary, similar statements could be obtained from some of the men who assisted Mr. Williamson in this work.

- Mr. Cobb's agricultural lease - purchase document stated that if at least 112 acres were cleared and seeded within a ten year period, Mr. Cobb could exercise his purchase option for $1,940 plus Crown Grant fees, plus the value of any Crown timber in existence upon the land at the time the option was exercised. His lease purchase agreement was signed in 1970; in November 1973 he applied to exercise the purchase option and the Crown Grant was issued in June 1974 after payment of $1,940 plus Crown Grant fees. This would indicate that the Lands Branch at the time was satisfied that there was no merchantable timber remaining on the lot.

iii) Close utilization was not in effect: You have stated that intermediate utilization (stump height 18", diameter at breast height 11.1", top diameter 8") was a minimum requirement up to 1972, and that since 1965 the Ministry has been encouraging close utilization (stump height 12", D.b.h. 7.1", top diameter 4"). You also stated that Mr. Boulton's stump cruise, which was only 18% higher than the scaled volume, confirmed that close utilization was not practiced, and that 1981 data show that Holding has still not obtained full close utilization standards.

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- Mr. Cobb, his forester Mr. Boulton, and his logger Mr. Williamson have all stated that the timber was cut to close utilization standards.

- As you have noted, the licence-to-cut document required that any trees 8" in diameter and larger measured outside the bark at a point 12" from the ground, if cut, were to be utilized to a top diameter of 6". Ministry staff wrote to Mr. Cobb on March 28, 1973 stating that "...all licence conditions have been complied with." As I indicated earlier there is considerable support for the position that almost all of the lot was clearcut, so therefore all of the lot would have been cut to meet the specifications of the licence-to-cut.

- The interim logging inspection report dated July 27, 1972 indicates that stumps and tops were being cut with the least possible waste, with an average stump height of 12", and average top diameter of 5". The final logging inspection report, dated March 6, 1973 similarly indicates that stumps and tops were cut with the least possible waste; stump height is given as 10" and top diameter as 5".

- With respect to Boulton's stump cruise, Mr. Boulton has stated that his work was undertaken in one small corner of the lot in an effort to determine whether there appeared to be reason to undertake a more precise estimate of the removed timber. At the time he stated (in an August 9, 1976 letter to Mr. Cobb's lawyer) that although the stump cruise indicated the scale to be 18.7% short, "A stump cruise of this nature, a few years after logging and after the area has been disturbed by a fire, is at best, a rough estimate, and subject to 10% - 20% possible errors." Mr. Boulton then undertook a perimeter cruise to provide what he considered to be a more accurate estimate of the removed timber.

- Mr. Boulton has also advised me that Holding's scale indicates that over 70% of the tops were 4" and 5" in diameter, and that many thousands of logs were under 5.5".

In summary, I believe that there is sufficient evidence to conclude that utilization levels on the lot in question approximated close utilization standards, that most of the lot was clearcut, and that the timber cut (with the exception of a small volume of pole material) went to Holding.

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I realize, as you have pointed out, that the information obtained by Mr. Standish is an estimate, and that it is no longer possible to determine exactly how much timber was removed from the lot. But Mr. Standish's estimates were obtained through the use of acceptable procedures with a reasonable range of accuracy. The difference between his estimates and the scaled volume is too great to be attributable to chance or to errors in estimation. Furthermore, the range of his estimates (624,033 - 754,645 cubic feet) includes the estimate obtained in 1976 by Mr. Boulton (741,322 cubic feet). I also understand that during the course of their investigation the R.C.M.P. had two other professional foresters prepare estimates of the volume of timber removed from Mr. Cobb's lot, and both of their estimates are in line with Mr. Standish's figures.

Given the consistency of these estimates and the difference between them and the scaled volume, and given what is known about Holding's scaling procedures, I have concluded that Mr. and Mrs. Cobb were subjected to a short scale. Furthermore, because Ministry staff allowed Holding to deviate significantly from acceptable scaling procedures (and in fact from the procedures which had been conditionally approved for Holding by the Chief Forester), and yet continued to assure the Cobbs that normal scaling procedures were being followed, I consider the Ministry to be responsible for the short scale.

Consequently, I am recommending as follows:

1. That Mr. Standish's estimate of net volume at Level 2 utilization be accepted as equivalent to the volume of timber removed from Mr. Cobb's lot and delivered to Holding Lumber Company. I am recommending the use of Level 2 because it is conservatively comparable to the utilization levels indicated in the two logging inspection reports and in the licence-to-cut.

2. That the Ministry recommend the approval of a special warrant to compensate the Cobbs for the value of the difference between the scaled volume and the Standish estimate, plus interest on that value, plus legal and forester's fees which the Cobbs have incurred in pursuing this matter. The Cobbs will of course then owe the Crown stumpage on the difference in the two volumes.

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These recommendations are made pursuant to section 22 of the Ombudsman Act, and I would appreciate being advised of the action which you intend to take in response to these recommendations. If you require more information or if you would like to discuss this matter, please contact me so that we can arrange a meeting. I do appreciate the cooperation you have shown in this matter thus far, and I would urge you to take prompt action to correct a problem which has already gone on for far too long.

Mr. Cobb has approached his M.L.A., the Honourable Claude Richmond on this matter and Mr. Richmond has indicated that he will be discussing this matter with your Minister, the Honourable T.M. Waterland. For this reason, and because Mr. Waterland has in the past met with Mr. Cobb on this complaint, I am providing a copy of this letter to both Mr. Waterland and Mr. Richmond.

Yours sincerely,

Karl A. Friedmann
Ombudsman

cc: The Honourable T.M. Waterland
Minister of Forests

The Honourable Claude Richmond
Minister of Tourism

Province of British Columbia
OFFICE OF THE DEPUTY MINISTER

Ministry of Forests

Parliament Buildings
Victoria
British Columbia
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January 13, 1983

Our File: 160-7
Your File: 80 1243

RECEIVED
JAN 17 1983
OMBUDSMAN
VICTORIA

Mr. Karl A. Friedmann
Ombudsman
Legislative Assembly
8 Bastion Square
Victoria, B.C.
V8W 1H9

Dear Sir:

Reference is made to the complaint of Mr. James Cobb concerning the scale returned against timber cut on Lot 1679 KDYD, licence to cut YK319 and your letter of October 13, 1982.

As a result of the statements made in your letter, copies of the original tally sheets recording the volumes scaled against log mark YK319, Mr. Cobb's licence to cut, were mailed to Victoria and re-examined. The timber was scaled by seven different licenced scalers depending on the shift worked and date of scaling. Not one of these men has had his licence suspended and according to our records two are still actively scaling.

A sample of the log volumes recorded have been converted back into diameters and lengths. The small end diameters break down as 4% 4 inches, 25% 5 inches and 71% over 5 inches. The data confirms the inspection officer's report that trees were utilized to 5 inches top diameter, rather than the 4 inches required to meet close utilization standards.

The scale data calculates an average log volume of 6.89 cubic feet and an average log length of 15.5 feet which is equivalent to an average volume of 0.41 m^3 for a 10 m log. The cruise data provides average volumes for 10 m logs at the different standards of utilization. These are:

...2/

Level	Minimum dbh cm (inch)	Stump Height cm (inch)	Top Diameter cm (inch)	10 m Log Volume m^3
1	17.5 (6.9)	30 (11.8)	10 (4)	0.28
2	17.5 (6.9)	30 (11.8)	15 (6)	0.34
3	17.5 (6.9)	45 (17.7)	15 (6)	0.34
4	23.0 (9.1)	30 (11.8)	15 (6)	0.38
6	22.5 (8.9)	30 (11.8)	17 (6.7)	0.40
8	27.5 (10.8)	30 (11.8)	15 (6)	0.40
5	22.5 (8.9)	45 (17.7)	20 (8)	0.44
7	27.5 (10.8)	45 (17.7)	20 (8)	0.49

The greater the length of small diameter timber utilized, the smaller is the average 10 m log size. The minimum diameter at breast height (dbh) of trees utilized and the minimum top diameter of the stem utilized greatly influence the average log volume as you can see in the above data. You will note a considerable drop in average log volume between level 2 and level 1 due to the inclusion of the tops of trees between 6 and 4 inches in diameter. There is also a considerable drop in average log volume between level 7 and level 5 as a result of the inclusion of trees between 8.9 and 10.8 inches in diameter. We have established that trees were utilized to a top diameter of 6 inches so that we must conclude that trees less than 10.8 inches dbh were not utilized, nor could trees less than 12 inches dbh have been utilized if we are to rationalize an average 10 m log volume equivalent in the scale of 0.41 m.

Your statement that the scaling procedures at the Holding Lumber Company sawmill deviated from normal practice is incorrect. The timber was measured and volumes correctly recorded by species and log mark. Daily and monthly summaries were computed from the daily tally sheets by the sawmill staff and monthly returns submitted to the Forest Service. These procedures are detailed in Section 133 of the former Ministry of Forests Act. The staff of the Forest Service were uncomfortable with a situation which permitted employees of a company to scale and return timber volumes against which stumpage charges were billed and stated so at the Sloan Commission hearings in 1955. In his 1956 report the Commissioner recommended that such scales be performed by Forest Service employees and in 1973 timber cut by Holding Lumber Company was scaled by Forest Service employees.

In the event that an inspection of company books revealed that an amount of timber had not been reported, section 133(4) of the former Ministry of Forests Act required that Mr. Cobb pay any arrears of stumpage due. Checks by Ministry employees have not revealed that an amount of timber has not been reported.

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Mr. Cobb profitted from the logging of his licence to cut to the extent of $71,006.18 before taxes. The contracter who provided all the equipment and paid the loggers received $70,870.88. The crown received $17,286.13 in stumpage. An additional $6,169.11 in barristers fees were paid. Normally the Crown would have collected $61,000 in stumpage from such an operation. The low stumpage charged on a licence to cut over an agricultural lease, such as YK319, is a generous policy of government to help farmers develop agricultural lands.

Since there is no evidence that any timber purchased by the Holding Lumber Company was not scaled and there is evidence that Mr. Cobb profitted very well from the logging of Crown timber we believe that further payments to Mr. Cobb out of general revenue would be inappropriate.

Yours truly,

T.M. Apsey
Deputy Minister

Legislative Assembly
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File No: 80 1243

March 29, 1983

Mr. T.M. Apsey
Deputy Minister
Ministry of Forests
1450 Government Street
Victoria, B.C.
V8V 1X4

Dear Mr. Apsey:

Re: Mr. James Cobb

Thank you for your letter of January 13, 1983. For a number of reasons I found it somewhat difficult to understand; however, I am now in a position to respond.

On the first and second pages of your letter, you raised a number of technical points. I found these confusing, but it appeared that you were combining information from the scale and the cruise data, and concluding that trees under a certain diameter could not have been utilized. I asked Mr. Jace Standish, R.P.F., of Talisman Land Resource Consultants to assist me in the interpretation and evaluation of these points. He has done this, and I enclose for your information a copy of his response to my request. Mr. Standish has made the following points which I consider to be relevant to this matter:

i) It is not possible to compute an adequate estimate of the distribution of top diameters based on the available scale information. Therefore, the distribution given on page 1 of your letter can only be rough approximation. (Also, this would apply to Mr. Boulton's estimate to which I referred on page 5 of my letter of October 13, 1982).

ii) It is technically incorrect to add together two average scaled log volumes for logs having an average length of approximately 5 meters and equate this value to the volume of an average 10 meter log.

iii) The conclusion respecting the utilization of trees less than 10.8 d.b.h. is based on arguments which compare scale and cruise data; these arguments are based on questionable assumptions, and do not seem tenable.

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You have advised that I incorrectly stated that the scaling procedures at Holding's mill deviated from normal practice. You have stated that "the timber was measured and volumes correctly recorded by species and log mark". The fact of the matter is that conditions at Holding's mill were such that Ministry staff had no way of determining whether or not the timber was measured and volumes correctly recorded by species and log mark.

I know a lot of time has passed since we first started corresponding on this matter, but perhaps you will recall that my September 14, 1981 letter to you discussed the scaling procedures in some detail. I pointed out that your Ministry permitted Holding to employ post water scaling subject to nine specific conditions. Those conditions had been established in an effort to improve the checkability of the operation; however, Holding was subsequently permitted to operate without complying with all or part of four of those conditions. It also appears that the initial set of conditions was established with the approval of the Chief Forester, and that Holding was given permission to dispense with compliance with some of those conditions by local Ministry staff without the knowledge of the Chief Forester.

You have also implied that Holding completed its scale returns correctly and in accord with Section 133 of the former Ministry of Forests Act, since Holding submitted monthly summaries. It may be that monthly summaries were submitted (although your files indicate that at least in early 1972 your Ministry was also having difficulty obtaining these); however, the testimony of your own staff clearly indicates that there were significant deficiencies in the arrangement by which scaling was reported by Holding (as indicated on page 6 of my September 14, 1981 letter).

When I detailed all of these various problems associated with scaling procedures and reporting, I asked for your comments. If any of my facts were in error, you had the opportunity to correct me; but you did not. In view of this, I find it difficult to understand why, sixteen months later, without ever commenting on the specific deficiencies I had pointed out, you make the general statement that I am incorrect in stating that the scaling procedures deviated from normal practice. Clearly the scaling and reporting deviated from the arrangement which had been approved by the Chief Forester, and deviated from what the Inspector of Licensed Scalers at the time considered to be acceptable or desirable practice.

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You have cited Section 133(4) of the former Ministry of Forests Act and stated that this provision would have required Mr. Cobb to pay any arrears of stumpage due if an inspection of company books revealed that an amount of timber had not been reported; you have also stated that checks by Ministry employees have not revealed that an amount of timber has not been reported. This latter statement may well be true; however it is also true that checks by Ministry employees could not reveal that timber had not been reported.

The logs were brought up a jack ladder, and moved along on a belt to the buck saw where they were bucked. These bucked logs were scaled as they moved along on the belt past the scalers to the barkers. After they were barked they were dropped back into the lake where they were mixed with other timber marks. As you will realize, there really was no possibility of a check scale, except perhaps for the one or two logs which had just been scaled. Since the scale could not be checked, since the timber mark could have been removed in the bucking process, since the scalers at times appeared not to know whose timber they were scaling, and since the pages of the scale returns were not numbered, there really was no way in which any checks or inspections by Ministry employees could have revealed unreported timber.

Your comments with respect to the profit which Mr. Cobb received from this operation were interesting, and although this is an issue completely unrelated to the matter at hand, I will respond by making two points:

i) The stumpage was set by your Ministry, and when the licence-to-cut was extended, it was extended at the same rate; that rate was apparently the rate applied to agricultural leases, and thus was correctly applied. I fail to see why you state that $61,000 should have been collected, instead of $17,286.

ii) However, to the extent that the timber was short scaled, the Crown has lost stumpage, since stumpage was paid on the basis of the scale.

In short, I have found nothing in your letter which would lead me to change the conclusions outlined in my earlier letter. The problem can be summarized as follows:

- There were significant deficiencies in the scaling and scale reporting procedure established and/or permitted by your Ministry.

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- This procedure permitted Mr. Cobb's timber to be short scaled, and permitted the short scale to go unreported.

- Mr. Boulton (Mr. Cobb's forester) had provided an estimate of the extent of the short scale; however, for various reasons the Ministry rejected this estimate.

- Mr. Waterland had earlier proposed that an independent forester be retained for the purpose of settling the matter; however, his staff at the time persuaded him not to follow this course.

- An independent appraisal appeared to be the only means of settling the matter, and in my September, 1981 letter I proposed a five-step resolution hinging on the provision of an acceptable estimate by an independent forester.

- The proposal proceeded; the forester met with your staff and they agreed on the procedures and assumptions to be used in the study. The terms of reference included two levels of utilization (close utilization and a second based on contract cutting specifications and logging inspection reports).

- The forester prepared estimates for four levels. His estimates for the two levels specified in the terms of reference were 754,645 c.f. and 659,520 c.f.; the estimates for the two other levels were 671,984 c.f. and 624,033 c.f.

- Your staff then requested estimates for four other levels of utilization; and this effort resulted in estimates down to 457,618 c.f., which as you have pointed out is close to the scale total.

- As I pointed out in my last letter, a number of factors indicate that the utilization standards practiced on Mr. Cobb's lot approached close utilization levels. These include information from your Ministry's files. I do not find there is justification for the intermediate levels of utilization you seem to prefer.

For these reasons, I am again recommending that a settlement be made with Mr. Cobb based on Mr. Standish's estimate at level 2 utilization. I would therefore ask you to reconsider your response to my recommendation. I believe that Mr. Cobb has been treated unfairly in this matter, that the unfairness has resulted from the Ministry's involvement, and that it is the Ministry's responsibility to take action to correct the problem.

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I would ask for a response to this request within two weeks of the date of this letter. I must also advise you that if you do not take appropriate action in response to my recommendation, I will consider it necessary to bring the matter to the attention of the Lieutenant Governor in Council.

Yours sincerely,

Karl A. Friedmann
Ombudsman

Attachment

Province of
British Columbia

OFFICE OF THE
DEPUTY MINISTER

Ministry of
Forests

Parliament Buildings
Victoria
British Columbia
V8W 3E7

78

April 28, 1983

File: 160-7
Your File: 80 1243

Mr. Karl A. Friedmann,
Ombudsman,
Legislative Assembly,
8 Bastion Square,
Victora, B.C.
V8W 1H9

Dear Sir:

Reference is made to your letter of March 29, 1983 concerning the complaint of Mr. James Cobb.

In reading your letter and the report of Mr. Jace Standish, R.P.F., it becomes obvious that there has been a misunderstanding with respect to the information recorded on the scale sheets. The scalers were not recording log volumes on the scale sheets. For each log two figures were recorded; one, the ten times volume of a cylinder equal to the length of the log and the small end diameter; and the second, the ten times volume of a cyclinder equal to the length of the log and the large end diameter. This information was provided Ms. Rivers verbally by Mr. Hutchings who also supplied Ms. Rivers with a copy of the Ministry form F.S.546 Table of Ten Times Volume of Cylinders in Cubic Feet.

The net length, small end diameter and large end diameter for each log can be found by looking up the recorded figures in the table. As an example on the 17th January, 1972 Messrs. Wenlock and Humphrey recorded the following numbers under F for fir which relate to the lengths and diameters shown.

Scale Data (10 x Volumes)	Interpreted Data Length (Feet)	Diameter (Inches)	Log Volume Cubic Feet
F			
126	16	12	
87	16	10	10.65
106	16	11	
87	16	10	9.65
53	20	7	
27	20	5	4.00
223	16	16	
315	16	19	26.90
106	16	11	
147	16	13	12.65
94	12	12	
79	12	11	8.65

To obtain the volume in cubic feet the sum of the 10 times volumes is divided by 20. Instructions on the use of the tables are at the front.

A total of 200 logs were interpreted by the Ministry. As lengths were consistently between 12 and 20 feet with a preponderance of 16 foot lengths we believe the average length provided by the Ministry is a reliable figure. Decay is estimated in the cruise as being between 1% and 2% so that there will have been little or no reduction of gross measurements in the scale and the net measurements interpreted may be considered to be gross measurements. Mr. Standish was incorrectly briefed and as a result his conclusions are incorrect.

The Ministry does not dispute that there was an opportunity for Holding Lumber Ltd. to submit incorrect scale summaries, however, no one has provided the Ministry with evidence that this in fact happened. If volumes were not being reported by the mill excessive lumber recoveries would have occurred. A study of the Holding mill records between January 1972 and August 1972 established a recovery of 6.61 board feet per cubic foot which is reasonable for the species of timber sawn. Mr. Cobb's contractor was paid a reasonable but not generous price per cubic foot for the timber he logged. If the scale had been deficit to the extent Mr. Cobb suggests the contractor could not have met his payroll. We further contend that the cruise data is supportive of the scaled volumes reported.

Yours truly,

T.M. Apsey

T.M. Apsey
Deputy Minister.

Legislative Assembly
Province of British Columbia

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File No: 80 1243

March 9, 1984

The Honourable T.M. Waterland
Minister of Forests
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Waterland:

Re: Mr. James Cobb
Barriere, B.C.

You may recall that I have in the past sent you copies of some of my correspondence with Mr. Apsey respecting Mr. Cobb's complaint. I have had Mr. Cobb's complaint under investigation for a long period of time, and Mr. Cobb himself has pursued it for an even longer period. The matter is now at a stage where the next course of action open to me involves making a report to the Lieutenant Governor in Council. However, since the recommendations I have made in this matter follow a suggestion which you initially made as a means of resolving the problem, I would like to meet with you to discuss the complaint before I take the matter further. Both your staff and mine have spent a fair bit of time and effort on this problem, and it seems to me that the issue is one which can and should be settled.

To review the problem briefly, Mr. Cobb logged Crown timber off an agricultural lease in the early 1970's. During 1972 and 1973 he delivered a number of booms of logs to Holding Lumber Company. The logs were scaled by Holding's scaler, and Mr. Cobb was paid on the basis of that scale.

However, my investigation indicates that there were problems with the scaling procedures established by the Ministry at Holding's mill. In 1967 the Ministry advised Holding that post water scaling would be permitted subject to nine conditions. Within a very short period of time Holding was permitted to scale without complying with four of those nine conditions. Permission for these changes was given by local Ministry officials without, it would appear, advising the Chief Forester who had set the initial conditions. The scaling procedures and the method of recording the scale were not satisfactory, and Ministry officials are on record as confirming this.

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In September, 1981 I advised Mr. Apsey of my conclusions and proposed a five stage resolution. Briefly, this resolution followed a suggestion which you had made earlier: that an independent forester be retained to prepare an estimate of the timber removed from the agricultural lease, and that this estimate be used as the basis for settling Mr. Cobb's complaint.

At Mr. Apsey's suggestion, I retained a professional forester to advise me as to the feasibility of this proposal. The advice was that a satisfactory estimate could be made.

Your Ministry then hired the forester to undertake a cruise of the area and the perimeter and to prepare an estimate of the volume of timber on the lease area. The conditions for this cruise and estimate were established, before the work commenced, in discussions between your staff and the forester. Two levels of utilization were specified for the volume estimates. The work was completed, and the forester advised your staff of the initial results. Your staff then requested that he project his results to four additional levels of utilization. At the lowest of these utilization levels (18" stump, 11.1" d.b.h., 8" top) the volume estimate came within the range of the scale returns. I do not believe that this utilization level should have been used, as your staff's logging inspection reports at the time show that a much higher utilization standard was actually practiced.

Your staff have raised a number of points respecting level of utilization since then, but I do not find them convincing in view of existing information. More recently, I have had a member of my staff examine a sample of the scale returns to determine log size. One of the interesting results was that the scale returns do not appear to include any large timber (i.e. any logs larger than about 24" in diameter). Both Mr. Cobb and his forester, Mr. Boulton have stated that there were a considerable number of very large fir trees on the lot; and in addition both early air photos and land reports confirm the existence of "old vets". I understand that it was Holding's practice to separate out large timber from the smaller, so it may be that this represents a fair proportion of the timber which Mr. Cobb feels was missed in the scaling process.

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That scaling process was established and modified by your Ministry. It was deficient in a number of respects, yet it was allowed to continue and in fact, Mr. Cobb was assured by Ministry staff that the scaling was carried out according to correct and usual Ministry procedures. Mr. Cobb relied on this information and as a result his timber was underscaled. Various parties have developed estimates of the volume of timber removed from Mr. Cobb's lease: Mr. Boulton, two foresters assisting the R.C.M.P. in their investigation, and Mr. Standish, the forester your Ministry hired to assist in my investigation. All have produced estimates higher than the Holding scale, and in some cases almost twice as high. In my view there is a considerable body of evidence that because of the scaling system permitted by your Ministry at Holding's mill, Mr. Cobb's timber was not completely scaled. As a result, he is short a significant amount of money.

I would like to arrange a meeting with you so that we could discuss Mr. Cobb's complaint in some detail and thereby attempt to come to some resolution of the matter. Please advise me as to an appropriate date and location.

Yours sincerely,

Karl A. Friedmann

Karl A. Friedmann
Ombudsman

Province of
British Columbia

OFFICE OF THE MINISTER

Ministry of
Forests

Parliament Buildings
Victoria
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V8V 1X4

83

March 20, 1984

Dr. Karl Friedmann
Ombudsman
8 Bastion Square
Victoria, B. C.
V8W 1H9

Dear Dr. Friedmann:

RE; Mr. James Cobb, Barriere, B.C.

Your letter of March 9 has been received in Mr. Waterland's office. Please advise on the following:

a. Does your March 9, 1984 letter represent a response to Mr. Apsey's letter to you of January 13, 1983? After 14 months, we had considered Mr. Apsey's letter to have concluded the matter.

b. Does what you are pursuing for Mr. Cobb at this time relate to the same factual situation adjudicated upon by the Supreme Court of British Columbia on September 1, 1977 (copy attached)?

An early response would be appreciated.

Yours truly,

(Mrs.) Joyce MacLaren
Ministerial Assistant to
Honourable Tom Waterland
Minister of Forests

Enc.

Legislative Assembly
Province of British Columbia

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- 84 -

File No: 80 01243

May 3, 1984

The Honourable T.M. Waterland
Minister of Forests
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Waterland:

Re: Mr. James Cobb, Barriere, B.C.

On March 9, 1984 I wrote to you requesting a meeting at which we could discuss Mr. Cobb's complaint and attempt to come to a resolution of the matter. Your assistant, Mrs. MacLaren, responded on March 20, 1984 with a letter consisting of two questions: was my letter a response to Mr. Apsey's January 13, 1983 letter, and does Mr. Cobb's complaint relate to a matter adjudicated upon by the Supreme Court of British Columbia in September, 1977.

I can confirm that my March 9, 1984 letter was not a response to Mr. Apsey's January 13, 1983 letter. Mr. Apsey and I have corresponded on the topic of Mr. Cobb's complaint since that time, and in addition, in the interim my staff have had discussions with officials of your Ministry concerning certain technical aspects of the problem. More particularly, I found it necessary to have my staff develop and examine a sample of entries from the Holding scale sheets in an attempt to determine the distribution of tops and log sizes. It was to this work that I referred on page 2, paragraph 4 of my March 9, 1984 letter when I indicated that the scale sheets did not appear to include any of the large timber that was known to exist on the property.

I can also confirm that Mr. Cobb's complaint does relate to the matter adjudicated upon by the Supreme Court of British Columbia in September, 1977. I have advised your officials of this on two previous occasions; in my February 17, 1981 letter of notification to Mr. Ritson, and in my September 14, 1981 letter to Mr. Apsey. Mr. Cobb had attempted to pursue the issue of the missing volume of wood through the courts, but his case was dismissed on the grounds that he should have raised this issue at the time of his earlier legal action pertaining to the contract price for the timber. It has always been Mr. Cobb's contention that he could not have raised the issue of the missing volume at the time of the earlier action because he had been unable to obtain copies of the daily scale sheets.

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The merits of Mr. Cobb's complaint were not examined in the 1977 action, and in 1980 Mr. Cobb brought his complaint to my attention. In any event, according to section 32 the provisions of the Ombudsman Act are in addition to the provisions of any other enactment or rule of law under which a remedy or right of appeal or objection is provided. As I have indicated in earlier correspondence, it is because the Ministry assured Mr. Cobb that proper, normal scaling procedures were being followed at the Holding mill, and because the daily scale sheets were not provided by the Ministry in a timely manner, that Mr. Cobb considers the Ministry to be responsible for his underpayment.

Again, I believe that the proposal which you yourself once suggested is the best means of resolving Mr. Cobb's complaint, and again, I would request a meeting with you so that we might discuss the merits of this approach in more detail. Please advise me as to when we might arrange such a meeting.

Yours sincerely,

Karl A. Friedmann

Karl A. Friedmann
Ombudsman

Province of
British Columbia

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MINISTER

Ministry of
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June 13, 1984

File: 160-7

Dr. Karl Friedmann
Ombudsman
8 Bastion Square
Victoria, British Columbia
V8W 1H9

Dear Sir:

Re: Mr. James Cobb, Barriere, B.C.

This will acknowledge receipt of your letter of May 3, 1984,

A review of this matter indicates Mr. Cobb first took up his complaint with the Ministry of Attorney General in 1979. The investigation of that complaint resulted in a review by the Ministry of Forests which concluded that there was no violation of the Forest Act and that no Crown employees were directly involved in the scaling process at the Holding millsite. Accordingly, the matter was felt to be a private dispute between Mr. Cobb and Holding Lumber Co. Ltd.

Notwithstanding the foregoing, as a consequence of the original complaint to the Attorney General the Lieutenant Governor in Council issued a fiat on November 15, 1979 which opened the way for Mr. Cobb to bring the matter before the Courts. To date he has apparently failed to do so.

In view of the foregoing I can see little point in our meeting at this time and unless Mr. Cobb chooses to proceed under his fiat, the Ministry of Forests will consider the matter closed.

cc KAF
84-06-14
E.

Yours truly,

T. M. Waterland
Minister

Province of
British Columbia

OFFICE OF THE
CABINET SECRETARIAT

Ministry of
Intergovernmental
Relations

Parliament Buildings
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V8V 1X4

- - '87

December 28, 1984

Dr. Karl Friedmann
Ombudsman
8 Bastion Square
Victoria, British Columbia
V8W 1H9

RECEIVED
JAN 3 1985
OFFICE OF THE OMBUDSMAN
VICTORIA

Dear Sir:

RE: Cobb Complaint

Following submission of your report to Cabinet on July 27th, 1984, I was instructed to convene a meeting to review your findings and recommendations and prepare a response to your report. As a result of this review, it would appear that several aspects of your report should be reconsidered since they are based on erroneous assumptions.

The first important area of concern is the interpretation being put on Ministry of Forests' correspondence authorizing the method of scaling for Holding Lumber Company. One of your conclusions was that during the scaling of the Cobb timber, scalers were required to use the normal scale return but that this condition was violated and the Company used its own returns. This is not so. The District Forester's letter of June 20th, 1967 dealt only with the scaling of timber from Holding's own timber licences on Adams Lake. The requirement was that an interim scale be prepared on watering which would include certain information to be included again on the final scale return. This would provide some assurance to the Ministry that timber leaving Holding's licences on Adams Lake did indeed arrive at the mill and get scaled in the normal way. The stipulation further provided that in the event that timber that was watered unscaled did not reach the mill, the interim return would be used as a basis for billing. Granting permission to Holding Lumber to use their own tally sheets to report final scale volumes did not change the condition and returns of bundle counts and volume estimates by boom were made for each boom watered.

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Another one of your findings was that an "important condition" of the approval was modified so as to permit logs of different timber marks to be mixed together into one boom. The Ministry of Forests, after an exhaustive review of the scale returns, reports that there is no evidence of logs from different marks being mixed on the scale sheet.

The other major point of disagreement is over the recovery levels that could be expected on the basis of utilization standards used on Mr. Cobb's lease. It would seem that any of the data gathered to date is limited in its usefulness by the underlying inability to ascertain the utilization levels that were actually achieved. This matter has been dealt with extensively in Mr. Apsey's previous letters to you dated January 13th, 1983 and July 13th, 1982. The difficulty in ascertaining at this late date the utilization levels accomplished has already been stressed and it would appear that this was one of the serious concerns indicated by the Ministry of Forests when they were first approached by your offices on this matter. The lack of stumps and other logging debris simply makes it impossible to determine utilization levels with any certainty.

It should be noted that there are several distinct aspects to utilization standards and one must not only consider stump height and top diameter but just as important or perhaps more so is the determination as to whether some trees were utilized at all. It is quite conceivable that while trees which were cut were utilized to an average five inch top diameter, at the same time trees with a diameter at breast height which exceed the minimum utilization standards were not harvested at all. Since the logging debris has all been piled and burned, it is not possible at this date to gather any direct evidence on this point. I am advised, however, that the Ministry of Forests is prepared to stand by its conclusion in Mr. Apsey's letter to you of January 13th, 1983 where he states:

> "We have established that trees were utilized to a top diameter of 5" so that we must conclude that trees less than 10.8" dbh were not utilized nor could trees with less than 12" dbh have been utilized if we are to rationalize an average ten meter log volume the equivalent in the scale of 0.41 m^3."

.../3

It is a matter of record that small trees remaining on the lease area after logging were gathered into wind rows and burned so that the land could be seeded to grass.

One further point of disagreement relates to your comment that the scale returns did not include any vets and the largest diameter of a log end which your staff found was 23". Copies of scale returns are enclosed with all log ends 19" and over highlighted in yellow. Each log with a diameter over 23" has been circled in red and the appropriate dimensions entered alongside. A total of 84 such logs have been recorded. When an adjustment is made for bark diameter which is not included in the recorded scale measure, their figures are quite consistent with the Tallisman Report which included measurements at breast height on the diameter of the outside bark with 18.6 veterans per hectare being identified as Type 1 and 11.4 veterans per hectare being identified as Type 2.

In view of the foregoing, we must say that what evidence is available is entirely consistent with a lower utilization level from that which you have adopted in your report which would result in a corresponding exaggeration of any deficiency in scale. I have therefore been instructed by Cabinet to advise you that your recommendations have not been accepted.

Yours truly,

for Bert Hick
Secretary to Cabinet

Legislative Assembly
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- 90 -

File No: 80 1243

February 15, 1985

Mr. Bert Hick
Secretary to Cabinet
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Hick:

Re: Cobb Complaint

Thank you for your letter of December 28, 1984, conveying the position of Cabinet with respect to my submission on Mr. Cobb's complaint. I have now had an opportunity to review the contents and the documents you have attached. Your letter focuses on three aspects of my submission, and I would like to address each of these separately.

The first point which you made was that I had misinterpreted Ministry correspondence authorizing scaling procedures at Holding Lumber Company. I must note that the issues you raise are matters which were brought to the Ministry of Forests' attention some 3-1/2 years ago, and if there were any errors or misinterpretations in my preliminary report, there was ample opportunity for the Ministry of Forests to correct them at that time.

However, having said that, let me turn now to the specifics of the details which you have raised. You seem to be indicating that the scaling procedures approved by the Ministry for Holding applied only to timber coming from Holding's own timber licences, and not to Cobb's timber. The correspondence is not specific on this point, and does not appear to set any such limitation. Moreover, the Ministry gave Mr. Cobb written permission to use Holding's scalers and made no note of any changes in procedures to be applied solely to Cobb's timber.

You have also indicated that the requirement to use the "normal scale return" was for the purpose of preparing an estimate of the timber before the logs were dumped into the lake, and that granting Holding permission to use their own tally sheets to report final scale volumes did not change this requirement. It may be true that the "normal scale return"

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requirement was intended for an estimate rather than the actual scale, however, I think you have missed the central point. Holding was given permission to use its own unnumbered scale sheets rather than the usual scale book, and because of this, it was never possible to determine whether or not all scale sheets were included in the compilation of the monthly scale return. This is an important deficiency, and the Ministry of Forests' former Inspector of Licenced Scalers, Mr. Whitehouse, stated in an affidavit that he would not have approved of this method of scale recording.

Your final point with respect to the scaling procedures was that the scale returns showed no evidence of logs of different timber marks being mixed on the scale sheet. My point was that Ministry staff gave Holding permission to mix timber marks, contrary to the initial requirements set by the Chief Forester. Since Cobb requested the scale sheets for his timber, it is quite reasonable to expect that he was given only those with his timber mark, and since the sheets were unnumbered, it is not possible to determine whether all were included. In fact, one of the bundles of sheets does include timber other than Cobb's. Shift A, October 25, 1972 included timber from C.P. #18 and C.P. #34, along with Cobb's timber, although each was on a different sheet. I notice that the package of sheets which you sent included the data for C.P. #18, but not that for C.P. #34. Moreover, it is clear from the scribbles, question marks, and crossings out on the sheets that the scalers frequently were confused as to whose timber they were scaling, and that was the point I emphasized.

Your second main area of concern was with level of utilization. I agree this is a difficult point, but I cannot accept the Ministry's argument which you have adopted on this matter. The Ministry has used data from the scale sheets to compute an average log volume, and has then applied this average log volume to cruise data to determine level of utilization. This is not an acceptable approach; as I have indicated above, and on numerous other occasions, the use of unnumbered scale sheets permitted the omission of some of the sheets from the monthly scale return calculations. For this reason, the scale sheets cannot be taken as a determinant of the level of utilization.

In my view - and I believe the Ministry was of the same view when it set the terms of reference for the cruise work done by Talisman - the logging inspection reports provide a better basis for determining the level of utilization. I agree that logging does not appear to have adhered specifically and exactly to the "close utilization" standards, but I

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believe there are grounds for assuming that similar standards were achieved. I realize that debris was windrowed and burned, but surely you would not have me believe Mr. Cobb burned some 200,000-300,000 cubic feet of timber. I must again suggest that one of the levels of utilization initially proposed in the Taliaman Report (i.e. levels 1-4) represents the best approximation of the actual level of utilization, with level 2 my preferred choice.

Your third point was that the scale sheets did include logs with diameters greater than 23". As I had indicated in my submission, and in an earlier letter, I had reviewed data from a sample of the scale sheet entries, and that sample did not include any logs with diameters over 23". Obviously, however, the more exhaustive review which you provided does indicate that there were some larger logs. I had made the point in an attempt to offer a possible explanation of the missing volume of timber. It may still be that there are missing scale sheets with concentrations of large timber, but there is no evidence to prove this. In any case, I appreciate your providing the information to clarify that point.

In summary, I must again urge that some appropriate action be taken to compensate Mr. Cobb for the difficulties he has experienced. It may be that a discussion of the situation would be fruitful at this time; I would be willing to meet with you to discuss the details of this case or other suggestions you might have for a meaningful resolution of the matter.

Yours sincerely,

Karl A. Friedmann

Karl A. Friedmann
Ombudsman

Province of
British Columbia

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March 25, 1985

Dr. Karl A. Friedmann
Ombudsman
8 Bastion Square
Victoria, B.C.
V8W 1H9

Dear Dr. Friedmann:

Re: Cobb Complaint

Thank you for your letter of February 15, 1985 expressing your views on the concerns that the Lieutenant Governor in Council has with regard to the implementation of your recommendations as contained in the report to the Lieutenant Governor in Council.

As you note this matter has been under consideration for some three and a half years now, and it is unfortunate that any discrepancies or misinterpretations could not be resolved at a much earlier date. However, it is essential that the issues now be well defined and agreed upon so that the Lieutenant Governor in Council can deal with the matter in a fair and equitable manner.

One of the important issues seems to be the meaning that is to be given to the Chief Forester's letter of May 27, 1967, which is included at Appendix "D" in your report of July 27, 1984. We understand you to interpret this letter so as to require a particular method of scaling to be used in respect of timber from Mr. Cobb's agricultural lease. The concern we have is that this approval letter predates Mr. Cobb's Licence to Cut, which was issued in July, 1971. That being the case, it is difficult to justify the interpretation of the Chief Forester's letter of May 29, 1967 and a subsequent letter of the District Forester dated June 20, 1967 as applying to Mr. Cobb's operations on Adams Lake. Clearly, Mr. Cobb

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would not have any operations on Adams Lake at that time. You also note in your response that the Ministry gave Mr. Cobb written permission to use holding scalers, and made no note of any changes and procedures to be applied solely to Cobb's timber. The Ministry of Forests advises that they have no record of any such correspondence, and we would be grateful if you could provide us with a copy of this approval.

We appreciate your comments on the use of unnumbered scale sheets, and the difficulty in ascertaining whether or not all scale sheets were included in the compilation of the monthly scale return. While this may create an opportunity for a person to withhold scale information if they were so inclined, the opportunity, itself, does not establish the breach. The company and its officials are adamant that all timber from Mr. Cobb's lease was included in the scale returns, and the volumes as we have pointed out in earlier correspondence are consistent with the intermediate level of utilization which the Ministry of Forests advises was the utilization level prevailing at that time.

We have put to the Ministry of Forests your comments on the mixing of different timber marks. The Ministry advises that the scaler's function is to designate timber on the scale return by its mark so as to indicate the place of origin and the stumpage rates that would be applicable. Since not all of Mr. Cobb's timber was marked when scaled the ownership was based on the boom identity. As long as the timber was differentiated by timber mark on the scale sheets, there would be no problem arising out of the fact that more than one mark may appear on a single scale sheet. It seems quit possible that since the timber was scaled going up the jack ladder that the fact that different marks may have been scaled on the same shift is not necessarily an indication that the timber was mixed in the booms, but only that more than one boom was scaled on the same date.

The other main issue appears to be the utilization levels that were achieved in the clearing of Mr. Cobb's agricultural lease. It would seem to us that

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the comparison of average scaled log size and cruise log size is a rational means of judging what level of utilization was practised. Since the logs were unsorted the omission of certain scale sheets if this occurred should not change the average scale log volumes significantly. The logging inspection reports show utilization standards of timber cut, but do not state the minimum size of tree cut for utilization. The Ministry points out that while some trees may have been utilized to close utilization standards, others may not have been utilized at all but simply wind rowed and burned. The Ministry further advises that current close utilization policies tolerate a residue of 250 cubic feet per acre, and that 200,000 to 300,000 cubic feet of timber left on Mr. Cobb's agricultural lease would have been dispersed over 230 acres so as to leave a residue of 870 to 1,304 cubic feet per acre. Again, the Ministry makes the point that this would be in line with intermediate utilization standards, and points out that the residue on Mr. Cobb's property was so great that it was gathered into wind rows for burning, a practice normally restricted to situations where the total stand is being destroyed by burning.

In the result, I can only say that the Lieutenant Governor in Council is not convinced of the appropriateness of the action recommended in your report, and accordingly cannot see to its implementation while the above points remain unresolved.

Yours truly,

Bert Hick.

Bert Hick
Secretary to Cabinet

AEH/acm/gc

Legislative Assembly
Province of British Columbia

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- 96

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File No: 80 1243

April 25, 1985

HAND DELIVERED

Mr. Bert Hick
Secretary to Cabinet
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Hick:

Re: Cobb Complaint

I have received and considered your March 25, 1985 letter in which you describe several issues relating to the Cobb complaint which the Lieutenant Governor in Council believes remain unsolved. It is indeed unfortunate that any such problems should continue to be considered unresolved at this point. However, the complaint is a complicated one, and in an attempt to once again assist the Lieutenant Governor in Council in its deliberations, I offer the following comments on the concerns you have conveyed.

1. The 1967 letters from the Chief Forester and the District Forester to Holding Lumber

You seem to be saying that because these letters predate Mr. Cobb's licence-to-cut, the procedures established therein did not apply to Mr. Cobb's operations. The Lieutenant Governor in Council should be advised that these letters were the culmination of a lengthy attempt on the Ministry's part to change Holding's scaling procedures. It appears that Ministry staff started meeting with Holding representatives on this matter early in 1966, and considerable correspondence - both internal and external - followed (e.g. see Ministry letters to Holding of May 6, 1966, May 30, 1966, March 16, 1967, and internal Ministry memoranda dated March 17, 1967, March 29, 1967 (2), May 19, 1967, and May 29, 1967.) As is clear from these documents, Ministry staff were dissatisfied with the pre-1967 scaling procedures and were attempting to establish new procedures which would permit the scaler to measure correctly and would permit adequate check scaling.

At that time it was contrary to Ministry policy to permit scaling after logs had been placed in the water (as Holding had proposed). However, this arrangement appeared to be an improvement over the previous

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procedure, and thus the Chief Forester gave permission for post water scaling on May 29th, 1967, subject to certain safeguards. That approval and the specific conditions were conveyed to Holding by the District Forester's June 20th, 1967 letter. This established Holding's new scaling procedures on an interim basis, and on December 12th, 1968 the District Forester gave Holding authority to continue using the post water scaling procedures (with previously noted amendments) on a continuing basis. I understand that Holding switched to a weight scaling procedure in 1972 or 1973.

Thus the 1967 letters established the scaling procedures to be used at Holding's mill; as such those procedures applied to all timber scaled at the mill - including Mr. Cobb's.

With respect to your request for a copy of the document permitting Mr. Cobb to use Holding's scalers, I am attaching a copy of Mr. Cobb's October 19th, 1971 request to use the scaler at the mill, and a copy of the Ministry's October 26th, 1971 response. The Ministry's permission is granted in the note by Mr. Whitehouse at the bottom of that letter.

2. Unnumbered Scale Sheets

My comments stand with respect to the problems associated with the use of unnumbered scale sheets. You have stated that the opportunity does not establish the breach, and that Holding officials are adamant that all Mr. Cobb's timber was scaled. Mr. Cobb is equally adamant that all of his timber was not scaled, and the various cruises and estimates which have been conducted on this issue point to a significant and unexplained discrepancy between the scale volumes and the estimates of logged volumes. The essential point with respect to the unnumbered scale sheets is that by giving Holding permission to use unnumbered sheets rather than the usual scale books, the Ministry was establishing a system under which it could not determine whether or not all sheets were included in the monthly returns. Consequently, the Ministry gave Holding permission to operate in a manner which would permit the omission of daily scale sheets not only for Mr. Cobb's timber, but also for timber from Holding's licences. In my view, in doing so the Ministry has neglected its important responsibility for accountability.

3. Mixing of Timber Marks In Booms

My primary concern with respect to this matter is that by permitting modifications to the initial scaling requirements, Ministry staff introduced further opportunity for scaling inaccuracies. The mixing of timber marks increased the likelihood that the scaler would not know

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whose logs he was scaling, and the various marks on the scale sheets indicate that there was such confusion. In some cases the scaler initially marked the scale sheet with the notation "Bcom #?) or identified the boom as belonging to someone else (e.g. "Crombie").

Mr. Cobb has advised me that the mill fed and operated two saws simultaneously - one for logs under 12" in diameter and one for logs over 12" - and that since the smaller saw could cut more logs than the larger one, it was Holding's practice to separate out booms in such a manner that both saws could be continuously fed. The Ministry had given Holdings permission to mix bundles of different timber marks within the same boom. Given this permission, and given the need to continuously feed two saws, it seems highly likely that logs were selected from different booms and bundles, which would have increased the likelihood of errors respecting timber marks. (Mr. Robinson's August 24th, 1979 letter to Mr. Cobb confirms the practice of selecting logs of one or more species from a boom and then returning that boom to storage.)

Again, the point I am making is that the procedure established and then modified by the Ministry made it more difficult to identify the source of the timber, and since stumpage rates are related to timber source, the Ministry was not exercising due care in permitting the practices followed by Holding.

4. Level of Utilization

The level of utilization is a key issue in this matter. I must again emphasize that the average scaled log volume is not an acceptable indicator of utilization. I have already pointed out the problems associated wtih the unnumbered scale sheets. You have stated that the omission of scale sheets would not have changed the average scaled log volumes since the logs were unsorted. However, while the logs may initially have been unsorted, there was a sorting procedure followed in selecting logs to go up the jack ladder where they were scaled (as confirmed by Mr. Robinson's August 24th, 1979 letter). Clearly, there were a number of significant problems with the scaling procedures which permitted the mixing and the omission of timber, and for that reason the scale is not a reliable or acceptable measure of the level of utilization practiced.

Under the circumstances, the Ministry's own logging inspection reports provide the best information on level of utilization. You have stated that while these reports show the utilization standards of timber cut, some trees might not have been cut at all, but simply windrowed and burned. In my view this is not a reasonable position, and does not

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adequately account for the 200,000 - 300,000 cubic foot discrepancy. For a more reasonable view on this point, the Lieutenant Governor in Council should consider the following:

- Mr. Cobb is a rancher, and was not engaged in logging prior to nor following the leasing and acquisition of Lot 1679. He wanted the trees removed as inexpensively as possible. Thus it was clearly to his advantage to sell to Holding as many logs as he could, in order to pay for his costs of clearing the land.

- Holding's mill had its own set of specifications for logs brought to the mill, and paid a bonus to loggers meeting those specifications. Holding's specifications had to do with the removal of knots and kinks, etc., and also included utilization down to a 4" top (compared to the Ministry's 6" requirement). Mr. Cobb reports that his loggers received the bonus on all logs delivered to Holding's mill.

- Mr. Cobb completely cleared and planted approximately 120 acres. This would of course require the removal of all stumps, many of which would certainly be over 8" in diameter. In addition, the logging inspection report indicates that there was butt rot in approximately 5% of the fir. It is reasonable to assume that the butt rot fir and the stumps remaining on the area constituted most of the fire debris to which the Ranger referred in his July 27th, 1972 letter to Mr. Cobb.

In short, Mr. Cobb had every incentive to get as much usable timber to Holding's mill as he could, and absolutely no incentive to burn 200,000 - 350,000 cubic feet of timber. Thus I consider the Ministry of Forests' position on this point to be eminently unreasonable.

The Ministry's logging inspection reports indicate that the timber was logged to a 10 - 12" stump height and a 5" top diameter, which is similar to the Ministry's close utilization standards (12" stump, 4" top). In setting the conditions for the work to be done for the Ministry by Talisman in 1982, the Ministry required that volume estimates be prepared for a least two utilization levels; one estimate was to assume close utilization standards, and the other "assumed level will reflect contract cutting specifications and information from Forest Service logging inspection reports" (18" stump, 6" top). Under the circumstances, I consider that my recommendation (that a settlement be made based on the volume estimate at a 12" stump and a 6" top) to be a very conservative one.

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This matter has indeed gone on for a very long period of time, and I would urge you to convey to the Lieutenant Governor in Council the importance of reaching a resolution. I recognize that the issue is complex and that it is easy to become lost in the technical details of the problem. However, the basic points are relatively straightforward:

- the scaling procedures established and permitted by the Ministry at Holding's mill did not permit adequate checking and increased the possibility of errors and omissions;

- there is a significant discrepancy between the volume of Cobb timber scaled by Holding (442,943 cubic feet) and the volumes estimated at either close utilization standards (754,645 cubic feet) or at the Ministry's suggested standard (659,920 cubic feet);

- the Ministry's logging inspection reports indicate that logging was conducted at approximately close utilization standards;

- Mr. Cobb had every incentive to take as much timber to Holding's mill as he could in order to recover his costs, and Holding bought timber down to a 4" top; additionally, there were no other mills on the lake to which the timber could be taken.

The weight of the evidence points to a missing volume of timber; given the Ministry's role in establishing a scaling procedure which was inadequate and did not incorporate proper accountability measures, it is incumbent upon the Ministry to correct the resulting situation by reaching a proper settlement with Mr. Cobb. Once again, I would urge the Lieutenant Governor in Council to take the necessary steps to ensure that this matter is resolved.

As always, I am prepared to meet with you or with the Lieutenant Governor in Council if there are further questions or if this would hasten the resolution of the complaint. In the interim, I would appreciate your conveying to the Lieutenant Governor in Council the need for timely consideration of this issue, since I cannot postpone indefinitely my decision with respect to the next step on Mr. Cobb's complaint.

Yours sincerely,

Karl A. Friedmann
Ombudsman

Enclosures (2)